

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE NORTHERN DISTRICT OF OHIO  
3                   EASTERN DIVISION  
4   IN RE:   NATIONAL                   :   MDL No. 2804  
5   PRESCRIPTION OPIATE               :  
6   LITIGATION                         :   Case No. 17-md-2804  
7   :  
8   APPLIES TO ALL CASES               :   Judge Dan Aaron Polster  
9   :  
10                                        :  
11                                        :

12                   HIGHLY CONFIDENTIAL  
13                   SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

14                                       - - - -

15                                       DECEMBER 13, 2018

16                                       - - - -

17   VIDEOTAPED DEPOSITION OF HBC SERVICE COMPANY'S  
18   DESIGNATED 30(B)(6) REPRESENTATIVE,  
19   JAMES TSIPAKIS,  
20   taken pursuant to notice, was held at Marcus & Shapira,  
21   One Oxford Center, 35th Floor, Pittsburgh, Pennsylvania  
22   15219, by and before Ann Medis, Registered Professional  
23   Reporter and Notary Public in and for the Commonwealth  
24   of Pennsylvania, on Thursday, December 13, 2018,  
25   commencing at 9:09 a.m.

26                                       - - - -

27                   GOLKOW LITIGATION SERVICES  
28                   877.370.3377 phone | 917.591.5672 fax  
29                   deps@golkow.com

Page 2	Page 4
<p>1 APPEARANCES</p> <p>2 On behalf of Plaintiffs</p> <p>3 LEVIN PAPANTONIO THOMAS MITCHELL</p> <p>4 RAFFERTY PROCTOR, P.A.</p> <p>5 BY: JEFF R. GADDY, ESQUIRE</p> <p>6 316 South Baylen Street, Suite 600</p> <p>7 Pensacola, Florida 32502</p> <p>8 800.277.1193</p> <p>9 jgaddy@levinlaw.com</p> <p>10 WAGSTAFF &amp; CARTMELL, LLP</p> <p>11 BY: TOM ROTTINGHAUS, ESQUIRE</p> <p>12 AND THOMAS SIDLINGER, ESQUIRE</p> <p>13 4740 Grand Avenue, Suite 300</p> <p>14 Kansas City, Missouri 64112</p> <p>15 816.701.1100</p> <p>16 trottinghaus@wcllp.com</p> <p>17 tsidlinger@wcllp.com</p> <p>18 On behalf of Defendant AmerisourceBergen Drug</p> <p>19 Corporation</p> <p>20 REED SMITH, LLP</p> <p>21 BY: BRIAN T. HIMMEL, ESQUIRE</p> <p>22 Reed Smith Centre</p> <p>23 225 Fifth Avenue</p> <p>24 Pittsburgh, Pennsylvania 15222</p> <p>25 412.288.3131</p> <p>bhimmel@reedsmith.com</p> <p>On behalf of Defendant Cardinal Health, Inc.</p> <p>WILLIAMS &amp; CONNOLLY LLP</p> <p>BY: COLLEEN MCNAMARA, ESQUIRE</p> <p>725 Twelfth Street, NW</p> <p>Washington, DC 20005</p> <p>202.434.5013</p> <p>cmcnamars@wc.com</p>	<p>1 * INDEX *</p> <p>2 THOMAS TSIPAKIS PAGE</p> <p>3 EXAMINATION BY MR. GADDY 8, 297</p> <p>4 EXAMINATION BY MR. ROTTINGHAUS 233</p> <p>5 EXAMINATION BY MR. MR. BARNES 269, 309</p> <p>6 * INDEX OF HBC-TSIPAKIS EXHIBITS *</p> <p>7 NO. DESCRIPTION PAGE</p> <p>8 Exhibit 1 First Notice of Deposition 10</p> <p>9 Pursuant to Rule 30(b)(6) and</p> <p>10 Document Request Pursuant to</p> <p>11 Rule 30(b)(2) and Rule 34 to</p> <p>12 Defendant HBC Service Company</p> <p>13 P-HBC-0001 - 0001.10</p> <p>14 Exhibit 2 Second Notice of Deposition 13</p> <p>15 Pursuant to Rule 30(b)(6) and</p> <p>16 Document Request Pursuant to</p> <p>17 Rule 30(b)(2) and Rule 34 to</p> <p>18 Defendant HBC Service Company</p> <p>19 P-HBC-0002 - 0002.14</p> <p>20 Exhibit 3 Letter, 10/15/18, J. Kobrin to 15</p> <p>21 Liaison Counsel for Plaintiffs</p> <p>22 and Defendants regarding topics</p> <p>23 deponent has been designated for</p> <p>24 in First and Second Notice</p> <p>25 P-HBC-0009 - 0009.2</p> <p>Exhibit 4 HBC Service Company's Responses 16</p> <p>to Plaintiffs' (First) Set of</p> <p>Combined Discovery Responses</p> <p>P-HBC-0011 - 0011.20</p> <p>Exhibit 5 Legislative history leading up to 27</p> <p>the Controlled Substance Act</p> <p>MCK 30b6_06 - 001 - 102</p> <p>Exhibit 6 21 U.S.C. Section 823 34</p> <p>P-GEN-0085 - 0085.6</p> <p>Exhibit 7 DEA Drug Fact Sheet for 43</p> <p>Hydrocodone</p> <p>P-GEN-0086 - 0086.2</p>
Page 3	Page 5
<p>1 APPEARANCES (Continued)</p> <p>2 On behalf of Defendants Endo Pharmaceuticals, Endo</p> <p>3 Health Solutions and Par Pharmaceuticals</p> <p>4 (By phone/Livestream)</p> <p>5 ARNOLD &amp; PORTER KAYE SCHOLER LLP</p> <p>6 BY: DAVID KOUBA, ESQUIRE</p> <p>7 601 Massachusetts Avenue, NW</p> <p>8 Washington, DC 20001-37453</p> <p>9 202.942.5743</p> <p>10 david.kouba@arnoldporter.com</p> <p>11 On behalf of Defendant HBC Service Company</p> <p>12 MARCUS &amp; SHAPIRA, LLP</p> <p>13 BY: THOMAS M. BARNES, ESQUIRE</p> <p>14 AND JOSHUA A. KOBRIN, ESQUIRE</p> <p>15 AND DANIEL B. MULLEN, ESQUIRE</p> <p>16 (Video stream and realtime)</p> <p>17 One Oxford Centre, 35th Floor</p> <p>18 Pittsburgh, Pennsylvania 15219</p> <p>19 412.471.3490</p> <p>20 rbarnes@marcus-shapira.com</p> <p>21 kobrin@marcus-shapira.com</p> <p>22 mullen@marcus-shapira.com</p> <p>23 On behalf of Defendant McKesson Corporation</p> <p>24 COVINGTON &amp; BURLING, LLP</p> <p>25 BY: EMILY KVESELIS, ESQUIRE</p> <p>One CityCenter</p> <p>850 Tenth Street, NW</p> <p>Washington, DC 20001-4956</p> <p>202.662.5807</p> <p>ekveselis@cov.com</p> <p>Also present</p> <p>Chris Ratano, videographer</p>	<p>1 * INDEX OF HBC-TSIPAKIS EXHIBITS (Continued) *</p> <p>2 NO. DESCRIPTION PAGE</p> <p>3 Exhibit 8 GAO Report "Prescription Drugs 49</p> <p>4 State Monitoring Programs Provide</p> <p>5 Useful Tool to Reduce Diversion,"</p> <p>6 May 2002</p> <p>7 P1.1076 - 1076.27</p> <p>8 Exhibit 9 CFR Regulation 1301.74, Security 54</p> <p>9 Requirements</p> <p>10 P1.47 - 1.47.2</p> <p>11 Exhibit 10 Press release "Cardinal Health, 60</p> <p>12 Incorporated agrees to pay \$34</p> <p>13 million to settle claims that it</p> <p>14 failed to report suspicious sales of</p> <p>15 widely abused controlled substances,"</p> <p>16 10/2/08</p> <p>17 P.1.48.1 - 1.48.2</p> <p>18 Exhibit 11 Reuters article "AmerisouceBergen 64</p> <p>19 gets DEA distribution halt order,"</p> <p>20 4/24/07</p> <p>21 P-GEN-0091</p> <p>22 Exhibit 12 Giant Eagle Inventory Control - 75</p> <p>23 Suspicious Order Policy</p> <p>24 P-HBC-0012 - 0012.16</p> <p>25 Exhibit 13 Letter, 6/12/12, to registered 122</p> <p>manufacturers and distributors</p> <p>to controlled substances, re</p> <p>suspicious orders</p> <p>ABDCMDL00269683 - 00269694</p> <p>Exhibit 14 Giant Eagle threshold report 138</p> <p>P-HBC-1032</p> <p>Exhibit 15 HBC Dosage Unit Distribution to 180</p> <p>Cuyahoga County, Summit County, and</p> <p>all of Ohio</p> <p>P-HBC0015</p> <p>Exhibit 16 Emails re Daily HBC Suspicious 183</p> <p>Orders</p> <p>P-HBC-0013 - 0013.41</p>

Page 6	Page 8
<p>1 * INDEX OF HBC-TSIPAKIS EXHIBITS (Continued) *</p> <p>2 NO. DESCRIPTION PAGE</p> <p>3 Exhibit 17 Email, 12/5/13, from J. Millward to 196</p> <p>4 A. Mollica, et al., subject: 2401</p> <p>5 HBC_MDL0032815 - 0032816</p> <p>6 Exhibit 18 Email chain, 8/20/15, from G. 199</p> <p>7 Carlson to J. Jenson, et al.,</p> <p>8 subject: FW: Thrifty White Notes</p> <p>9 HBC_MDL00069566 - 00069571</p> <p>10 Exhibit 19 Email, 11/16/15, from J. Millward 205</p> <p>11 to P. Raub, et al., subject: SOM</p> <p>12 and Controlled drug monitoring</p> <p>13 HBC_MDL000049996</p> <p>14 Exhibit 20 Email chain, 3/29/16, from A. 210</p> <p>15 Zakin to G. Chunderlik, et al.,</p> <p>16 subject: RE: Giant Eagle / Buzzeo</p> <p>17 PDMA: SOM Services Proposal</p> <p>18 HBC_MDL00028498 - 00028500</p> <p>19 Exhibit 21 Email, 8/16, from J. Cornwell to 216</p> <p>20 P. Raub, et al., subject: Emailing:</p> <p>21 Order_Item_Blocking_5-Dec_13.docx,</p> <p>22 SuspiciousReporting.sql</p> <p>23 HBC_MDL00086642 - 00086644</p> <p>24 Exhibit 22 Email, 11/21/16, from P. Raub to 219</p> <p>25 M. Doerr, et al., subject: RE:</p> <p>Suspicious Order Monitoring (SOM)</p> <p>HBC-MDL00046220 - 00046228</p> <p>Exhibit 23 Email chain, 1/10/14, from T. 240</p> <p>Roahrig to J. Millward, subject: RE:</p> <p>Daily HBC Suspicious Purchasing</p> <p>Report - 01/09/14</p> <p>HBC_MDL00039223</p> <p>Exhibit 24 20140130 Daily HBC Controls 242</p> <p>P-HBC-1055; T054; T059; T052; T053</p> <p>Exhibit 25 Letter, 4/28/14, to DEA, Re: 259</p> <p>Pharmacy Profession Comments to</p> <p>DEA Notice of Proposed Rulemaking</p> <p>on the Rescheduling of Hydrocodone</p> <p>Combination Products from Schedule</p> <p>III to Schedule II</p>	<p>1 MR. SIDLINGER: Along with Thomas</p> <p>2 Sidlinger for plaintiffs.</p> <p>3 MS. KVESELIS: Emily Kveselis from</p> <p>4 Covington for McKesson.</p> <p>5 MS. MCNAMARA: Colleen McNamara,</p> <p>6 Williams &amp; Connolly, for Cardinal Health.</p> <p>7 MR. HIMMEL: Brian Himmel from Reed</p> <p>8 Smith for AmerisourceBergen Drug Corporation.</p> <p>9 MR. KOBRIN: Josh Kobrin with Marcus &amp;</p> <p>10 Shapira for HBC Services Company.</p> <p>11 MR. BARNES: Robert Barnes, Marcus &amp;</p> <p>12 Shapira, HBC Service Company.</p> <p>13 EXAMINATION</p> <p>14 BY MR. GADDY:</p> <p>15 Q. Good morning. State your name, please.</p> <p>16 A. James Tsipakis.</p> <p>17 Q. And, Mr. Tsipakis, who do you work for?</p> <p>18 A. Giant Eagle.</p> <p>19 Q. And what's your position with Giant</p> <p>20 Eagle?</p> <p>21 A. Head of pharmacy for Giant Eagle.</p> <p>22 Q. Okay. Do you understand that you're</p> <p>23 here to testify today on behalf of HBC?</p> <p>24 A. I do.</p> <p>25 Q. And do you understand that you've been</p>
Page 7	Page 9
<p>1 PROCEEDINGS</p> <p>2 - - - -</p> <p>3 THE VIDEOGRAPHER: We are now on the</p> <p>4 record. My name is Chris Ratano. Today's date is</p> <p>5 December 13, 2018, and the time is approximately</p> <p>6 9:09 a.m.</p> <p>7 This video deposition is being held in</p> <p>8 Pittsburgh, PA at Marcus &amp; Shapira, LLP, One</p> <p>9 Oxford Centre, 35th Floor, in the matter of</p> <p>10 National Prescription Opioid Litigation, MDL No.</p> <p>11 2804, Case No. 17-md-2804.</p> <p>12 The deponent today is James Tsipakis. All</p> <p>13 counsel will be noted upon the stenographic</p> <p>14 record.</p> <p>15 The court reporter today, Ann Medis, will</p> <p>16 please swear in the witness.</p> <p>17 JAMES TSIPAKIS,</p> <p>18 having been first duly sworn, was examined</p> <p>19 and testified as follows:</p> <p>20 THE VIDEOGRAPHER: You May proceed.</p> <p>21 MR. GADDY: Can we have all counsel who</p> <p>22 is present identify themselves.</p> <p>23 This is Jeff Gaddy for plaintiffs.</p> <p>24 MR. ROTTINGHAUS: Tom Rottinghaus for</p> <p>25 plaintiffs.</p>	<p>1 designated by HBC as a 30(b)(6) witness to testify</p> <p>2 on behalf of the company HBC?</p> <p>3 A. I do.</p> <p>4 Q. So you understand the answers that you</p> <p>5 give today will not be Jim Tsipakis's answers, but</p> <p>6 they will be HBC's answers?</p> <p>7 A. I do.</p> <p>8 Q. Now, you mentioned you're employed by</p> <p>9 Giant Eagle; correct?</p> <p>10 A. Yes.</p> <p>11 Q. Explain to me your understanding of the</p> <p>12 relationship between Giant Eagle and HBC.</p> <p>13 A. Giant Eagle, as a company, owns HBC.</p> <p>14 Q. So HBC is a division of Giant Eagle?</p> <p>15 A. I'm not sure of the legal entities. I</p> <p>16 know Giant Eagle, as a company, owns HBC.</p> <p>17 Q. So the -- HBC and Giant Eagle are not</p> <p>18 competitors.</p> <p>19 A. Giant Eagle owns HBC. It's -- it's one</p> <p>20 of our company assets.</p> <p>21 Q. How long has Giant Eagle owned HBC?</p> <p>22 A. I'm not exactly sure.</p> <p>23 Q. Is HBC still in business?</p> <p>24 A. HBC is still operating, yes.</p> <p>25 Q. Does HBC still distribute products to</p>

<p style="text-align: right;">Page 10</p> <p>1 Giant Eagle's pharmacies -- or, excuse me, Giant 2 Eagle stores? 3 A. Yes. 4 Q. Does HBC still distribute any narcotics 5 to Giant Eagle stores? 6 A. It does not. 7 Q. So not even noncontrolled narcotics? 8 A. Prescription drugs, no. 9 Q. Does it distribute over-the-counter 10 drugs to Giant Eagle stores? 11 A. Yes. 12 Q. I'm going to show you what's marked as 13 HBC 1. 14 (HBC-Tsipakis Exhibit 1 was marked.) 15 BY MR. GADDY: 16 Q. I'll ask you if you recognize that 17 document. 18 This is the first notice of deposition. Have 19 you seen this before? 20 A. Yes. 21 Q. And have you had the opportunity to 22 review this? 23 A. Parts of it, yes. 24 Q. If you turn to the -- do you see in the 25 upper right-hand corner, as you turn the pages,</p>	<p style="text-align: right;">Page 12</p> <p>1 not knowledgeable about the matters specified in 2 the deposition notice, it must, nonetheless, 3 prepare such designee to give knowledgeable, 4 binding answers." 5 Do you see that? 6 A. Yes. 7 Q. How long have you been with Giant Eagle? 8 A. Since late October 2017. 9 Q. Do you understand that this deposition 10 notice will cover activity going back to 2006? 11 A. Yes. 12 Q. And have you taken steps to prepare to 13 be able to answer questions about HBC's conduct 14 going back to 2006? 15 A. Yes. 16 Q. What did you do to prepare? 17 A. Met with Giant Eagle's internal and 18 external counsel. Spoke to employees within our 19 organization. Looked through documents, and did a 20 diligence. 21 Q. Let me ask you this. 22 When did you first find out you were going to 23 be the designee to testify here? 24 A. Roughly, about four weeks ago. 25 Q. And in the last four weeks, how much</p>
<p style="text-align: right;">Page 11</p> <p>1 there's going to be .2, .3, .4, as you go through 2 the page numbers. 3 Do you see that? 4 A. Yes. 5 Q. If you turn to .2. And down at the 6 bottom of the bottom there's a heading that says 7 "Duty to Prepare." 8 Do you see that? 9 A. Yes. 10 Q. It says, "The testimony elicited in the 11 deposition represents HBC's knowledge, not the 12 individual deponent's knowledge." 13 Do you see that? 14 A. Yes. 15 Q. And that's consistent with your 16 understanding? 17 A. Yes. 18 Q. It goes on down to say that "HBC must 19 conduct a thorough investigation in response to 20 deposition notice and must prepare a witness to 21 testify to all matters known or reasonably 22 available to the organization." 23 Do you see that? 24 A. Yes. 25 Q. It then says that "If HBC designee is</p>	<p style="text-align: right;">Page 13</p> <p>1 time would you say you spent preparing for this 2 deposition? 3 A. Forty to 50 hours. 4 Q. If you would turn towards, for me, 5 please to .6. 6 Do you see at the top of the page it says, 7 "Subject Matters for Testimony"? 8 A. Yes. 9 Q. And are you prepared to give testimony 10 today on behalf of HBC on the topics listed there 11 all the way through N on the next page? 12 A. Yes. 13 Q. And for each of these topics, are you 14 prepared to give testimony going back to 2006? 15 A. Yes. 16 Q. I'm going to show you what I'll mark as 17 Exhibit No. 2 to your deposition here today. 18 (HBC-Tsipakis Exhibit 2 was marked.) 19 BY MR. GADDY: 20 Q. Tell me if you recognize this document, 21 if you had an opportunity to review it before. 22 It is the second 30(b)(6) notice. 23 A. I'm sorry. Your question is? 24 Q. Have you seen this before and had the 25 opportunity to review it?</p>

Page 14

1 A. Parts of it, yes.  
2 Q. And I'll represent to you it has the  
3 same obligations as far as requiring you to  
4 prepare to provide responsive answers for the  
5 relevant time period, which is back to 2006.  
6 Did you do that for the topics that you're  
7 going to testify about as it relates to this  
8 notice as well?  
9 A. Is there specific areas that you'd like  
10 to point me to that -- as you did on the previous  
11 document?  
12 Q. Well, sure. If you turn to page 8,  
13 Topic 6, 7, and 8, are you prepared to testify on  
14 those today?  
15 A. Yes.  
16 Q. And if you turn to page 9, on Topic 12,  
17 are you prepared to testify on that today?  
18 A. Yes.  
19 Q. And then on page 10, Topics 17, 18, and  
20 20, 21, and 22, are you prepared to testify on  
21 those today?  
22 A. Yes.  
23 Q. And the 40 to 50 hours that you told me  
24 you spent preparing earlier, was that -- did that  
25 also include the time you spent preparing to

Page 15

1 testify on these topics?  
2 A. Yes.  
3 MR. BARNES: Jeff, I'll note for the  
4 record that he's prepared to testify on these  
5 topics as may have been amended by the special  
6 master.  
7 MR. GADDY: I'm also going to mark, for  
8 the record, Exhibit No. 3.  
9 (HBC-Tsipakis Exhibit 3 was marked.)  
10 BY MR. GADDY:  
11 Q. I don't know if you had the opportunity  
12 to see this before.  
13 Is that familiar to you?  
14 A. No.  
15 Q. I won't ask you any questions about it,  
16 Mr. Tsipakis.  
17 You told me a few minutes ago that HBC no  
18 longer distributes any prescription drugs to Giant  
19 Eagle.  
20 That's correct?  
21 A. Yes.  
22 Q. At some period of time, did HBC have a  
23 license to distribute Schedules III, IV, and V  
24 controlled substances?  
25 A. Yes.

Page 16

1 Q. What period of time?  
2 A. From -- my recollection is from 2009,  
3 late 2009, through early 2016.  
4 Q. Are you telling me the time period that  
5 they actually distributed hydrocodone products or  
6 the period for which they had a license?  
7 Do you understand the difference?  
8 A. Yes, sir.  
9 HBC received a license to distribute earlier  
10 in 2009, but did not begin distributing products  
11 until late 2009.  
12 Then it continued to supply product until it  
13 was shut down -- till that portion was shut down  
14 in 2016.  
15 Q. So the license was obtained by HBC prior  
16 to 2009; correct?  
17 A. My understanding is the license for HBC  
18 was obtained in early 2009.  
19 Q. Let me see if I can refresh your  
20 recollection.  
21 I'm going to show you what's been marked as  
22 Exhibit 4 to your deposition.  
23 (HBC-Tsipakis Exhibit 4 was marked.)  
24 BY MR. GADDY:  
25 Q. This is HBC's responses to the first set

Page 17

1 of combined discovery responses.  
2 Have you seen this document before?  
3 A. Sure.  
4 Q. And this is HBC 11 for our internal  
5 reference number.  
6 A. It looks somewhat familiar, yes.  
7 Q. Did you have any -- provide any  
8 assistance in preparing the responses to these?  
9 A. May I glance through them to --  
10 Q. Of course.  
11 A. Looking through this, I don't recognize  
12 any specific areas that I would have -- at least  
13 from the surface, the quick read that I did, I  
14 don't see specific areas that I would have added  
15 to this.  
16 Q. Do you know whether or not you helped  
17 gather any documents that would have been  
18 responsive to either this or any of the other  
19 discovery requests in the case?  
20 Have you ever helped the attorneys gather  
21 documents or collect documents?  
22 A. Can you help me? Can you repeat the  
23 question?  
24 Q. Sure. So in this litigation, HBC has  
25 produced documents to us.



Page 18

1 Have you ever assisted with that in any way?

2 A. I assisted in the form of allowing and

3 making sure that employees and folks that would

4 have information were available for whatever was

5 needed to gather the information for this case.

6 Q. So you -- would it be fair to say you

7 acted as the liaison to different employees as

8 opposed to you personally gathering documents?

9 A. I assisted -- being newer to the

10 company, there wasn't a lot of documents and

11 information that I had.

12 So certainly it was folks related to, within

13 the organization, that had different knowledge

14 needed. And, as I said, we made sure that people

15 were available, information that was needed was

16 made available to -- to our attorneys and

17 certainly the folks helping prepare for the case.

18 Q. If you would, turn to page 8 of that.

19 And I was asking you earlier about the dates

20 that HBC had a license to distribute controlled

21 substances.

22 Do you recall that?

23 A. Yes.

24 Q. And you agree that to have a license to

25 distribute controlled substances, you have to be

Page 19

1 registered with the DEA?

2 A. Yes.

3 Q. If you look there in the middle of the

4 page it says that -- the question that's being

5 asked there is, "Please produce each of your

6 suspicious order monitoring system policies and

7 procedures since January 1, 2006."

8 Do you see that?

9 A. Yes.

10 Q. And I'll represent to you that this

11 first paragraph here is a series of -- series of

12 objections.

13 I'm going to take you about halfway down the

14 paragraph. On the right side of the page there's

15 a sentence that starts, "HBC also..."

16 A. "HBC also..."

17 Q. Are you with me?

18 A. Yes.

19 Q. It says, "HBC also objects to the time

20 period of since January 1, 2006 as overly broad,

21 unduly burdensome, not proportional, not

22 relevant."

23 And it goes on to say, "HBC, which did not

24 provide services as a licensed distributor of

25 controlled substances until 2007."

Page 20

1 Do you see that?

2 A. I do.

3 Q. Does that refresh your recollection that

4 HBC was -- actually was licensed by the DEA as a

5 registrant back in 2007?

6 And then if you continue to read, it says,

7 "They did not distribute any Schedule III opioids

8 until November of 2009."

9 A. I do see that.

10 Q. Do you know which month in 2007 HBC

11 became licensed by the DEA?

12 A. I do not.

13 MR. BARNES: Jeff, if it makes things

14 easier, that answer is going to be amended to

15 2009, because we have since learned that it was

16 2009.

17 MR. GADDY: Okay. When did you find

18 that out?

19 MR. BARNES: During his prep.

20 MR. GADDY: And you're telling me now in

21 the middle of the deposition?

22 MR. BARNES: Well, I'm telling you --

23 I'm obviously telling you now.

24 MR. GADDY: I mean, how long have you

25 known that?

Page 21

1 MR. BARNES: Probably about 48 hours.

2 MR. GADDY: I got an email from Josh

3 last night and had a call with Josh two days ago.

4 It's fairly significant, don't you think?

5 MR. KOBRIN: They never represented that

6 they distributed before 2009, so that probably

7 never came up and I never thought it was going to

8 be pertinent to this deposition.

9 It doesn't change any of our distribution

10 activities.

11 MR. GADDY: Is there anything else you

12 all are going to be amending, before we keep

13 going, about any of these responses?

14 MR. BARNES: Not that I can think of

15 right now. If something comes to mind, I'll let

16 you know.

17 MR. GADDY: Okay. About 30 minutes ago

18 Josh gave me a new suspicious order that was

19 reported in 2013.

20 Are there any more suspicious orders?

21 MR. BARNES: Yeah. That was for a

22 Control III, which is irrelevant to the case. We

23 thought we would give it to you anyway since you

24 wanted -- you seem to be interested in suspicious

25 orders.

<p style="text-align: right;">Page 22</p> <p>1 Are you complaining that you're getting a  2 suspicious order or don't you want the IIIs at  3 all?  4 MR. GADDY: I'm complaining that I'm  5 getting it the morning of the deposition when  6 discovery has been going on for five or six  7 months.  8 I'm asking if there's any more, that you're  9 aware of, that haven't been given.  10 MR. BARNES: If we find any more  11 irrelevant documents, we'll get them to you as  12 fast as we can.  13 MR. KOBRIN: Just for the record, I  14 emailed you last night. I told you that we  15 discovered it and I would have copies for you this  16 morning. And we gave you those copies.  17 MR. GADDY: I'm just asking if there's  18 anything else.  19 MR. KOBRIN: Not to our knowledge at  20 this time.  21 BY MR. GADDY:  22 Q. Mr. Tsipakis, what's your understanding  23 of the time period in which HBC did, in fact,  24 distribute Schedules III, IV, and V controlled  25 substances?</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. Were there any Schedule III drugs that  2 HBC refused to distribute?  3 MR. BARNES: Objection. Relevance.  4 Discovery master has held Schedule IIIs to be  5 irrelevant.  6 MR. GADDY: You made your objection.  7 You made your objection, Bob.  8 The witness can answer the question.  9 THE WITNESS: Can you repeat the  10 question, please?  11 BY MR. GADDY:  12 Q. Sure. Are there any Schedule III drugs  13 that HBC refused to distribute?  14 MR. BARNES: Objection.  15 THE WITNESS: When you say "refused," I  16 don't understand.  17 BY MR. GADDY:  18 Q. Sure. Were there any Schedule III drugs  19 that HBC decided these drugs are addictive,  20 they're subject to abuse, we're not going to  21 distribute those drugs?  22 MR. BARNES: Same objection.  23 THE WITNESS: The product mix was based  24 on many factors. There was no -- there was no --  25 there was no block on products, as any business</p>
<p style="text-align: right;">Page 23</p> <p>1 A. From late 2009 to early 2016.  2 Q. And to what businesses or entities did  3 HBC distribute controlled substances?  4 A. To our own stores, Giant Eagle  5 pharmacies.  6 Q. Did HBC distribute to any other  7 businesses, pharmacies, hospitals, physicians,  8 other than Giant Eagle stores?  9 A. No.  10 Q. During the time period that HBC  11 distributed Schedule III controlled substances,  12 would it be accurate to say that opioids, and,  13 more specifically, hydrocodone combination  14 products was one of the drugs that HBC  15 distributed?  16 A. HBC only distributed hydrocodone  17 products as a Schedule III. Once it was  18 reclassified, they no longer distributed those  19 products.  20 Q. So the answer is, yes, from 2009 until  21 200- -- or, excuse me, until hydrocodone was  22 reclassified, HBC did distribute hydrocodone  23 combination products?  24 A. From -- potentially from '09 through the  25 reclass, yes.</p>	<p style="text-align: right;">Page 25</p> <p>1 decides what products to carry in the warehouse or  2 not.  3 So I guess I'm still not understanding your  4 question specifically.  5 BY MR. GADDY:  6 Q. Okay. I think it's fairly simple.  7 I'm asking whether or not HBC made a decision  8 to not distribute any particular drug that they  9 were licensed and had the ability to distribute.  10 A. Okay. I understand now.  11 No.  12 Q. Can you give me some examples of the  13 types of hydrocodone combination products that HBC  14 would have distributed?  15 A. Hydrocodone-containing products.  16 Generic Vicodin products. Certainly cough syrups  17 that had hydrocodone in it. Different  18 formulations and different generic names,  19 et cetera. Those types of products.  20 Q. And Vicodin is a product that's a  21 combination of hydrocodone and acetaminophen?  22 A. Correct.  23 Q. Also Lortab, the same type of product?  24 A. Yes.  25 Q. Norco I think is the type of product?</p>

<p style="text-align: right;">Page 26</p> <p>1 A. Yes.</p> <p>2 Q. And those are all types of drugs that</p> <p>3 HBC would have distributed from 2009 until 2014</p> <p>4 when the schedules changed.</p> <p>5 A. Yes.</p> <p>6 Q. Now, do you have an understanding of</p> <p>7 HBC's responsibilities under the Controlled</p> <p>8 Substance Act?</p> <p>9 A. I do, yes.</p> <p>10 Q. Is that something that you have in the</p> <p>11 normal course of your job duties or is that</p> <p>12 something that you had to prepare for today?</p> <p>13 A. Specifically to HBC, it's as a</p> <p>14 registrant, so it has a duty to uphold all of the</p> <p>15 laws that it's governed by, yes.</p> <p>16 Q. My question was a little bit different.</p> <p>17 Did you have an understanding of those laws</p> <p>18 and regulations in the course of your own position</p> <p>19 with Giant Eagle or is that something that you had</p> <p>20 to prepare for today?</p> <p>21 And let me kind of explain what I'm asking.</p> <p>22 You would agree that there's different rules</p> <p>23 and regulations for pharmacies than there are for</p> <p>24 distributors; correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 28</p> <p>1 BY MR. GADDY:</p> <p>2 Q. And I'll represent to you this is the</p> <p>3 legislative history leading up to the -- what's</p> <p>4 commonly referred to as the Controlled Substance</p> <p>5 Act.</p> <p>6 Do you know if you've ever seen this document</p> <p>7 before?</p> <p>8 A. Vaguely familiar.</p> <p>9 Q. Is HBC familiar and have an</p> <p>10 understanding of the Controlled Substance Act?</p> <p>11 A. Yes.</p> <p>12 Q. If you turn to -- the numbering system</p> <p>13 is a little bit different on this one. You'll</p> <p>14 have a dash. And I'm on page -002, the second</p> <p>15 page of the document.</p> <p>16 Are you with me?</p> <p>17 A. Yes, sir.</p> <p>18 Q. If you go down about two-thirds,</p> <p>19 three-fourths of the way down the page, there's a</p> <p>20 section that says "Principal Purpose of this</p> <p>21 Bill."</p> <p>22 Do you see that?</p> <p>23 A. I'm sorry. Where? The second page?</p> <p>24 Q. Let me actually -- let me start at the</p> <p>25 very top first.</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. And your position with Giant Eagle,</p> <p>2 would it be fair to say, more relates to the</p> <p>3 pharmacy side?</p> <p>4 A. My current position?</p> <p>5 Q. Yes.</p> <p>6 A. I'm responsible for the total pharmacy</p> <p>7 operations.</p> <p>8 Q. Does that include the distribution of</p> <p>9 Schedule II, III narcotics?</p> <p>10 A. I don't directly oversee the warehouse.</p> <p>11 But certainly I have -- I'm a stakeholder within</p> <p>12 the total company.</p> <p>13 As an officer of the company, it -- I have an</p> <p>14 obligation for all portions of the company,</p> <p>15 including distribution, although I don't</p> <p>16 day-to-day oversee that.</p> <p>17 Q. So did you have to prepare to be able to</p> <p>18 testify today about HBC's responsibilities under</p> <p>19 the Controlled Substance Act as it relates to its</p> <p>20 role as a distributor?</p> <p>21 A. Yes.</p> <p>22 Q. I'm going to show you PGent 40, which</p> <p>23 I'm going to mark as Exhibit No. 5.</p> <p>24 (HBC-Tsipakis Exhibit 5 was marked.)</p> <p>25</p>	<p style="text-align: right;">Page 29</p> <p>1 A. Okay.</p> <p>2 Q. At the very top of the page, see it's</p> <p>3 got the HR, it's got the bill number, and then</p> <p>4 below that it shows the session of Congress 1970?</p> <p>5 A. Yes.</p> <p>6 Q. Do you see that?</p> <p>7 Does HBC understand that there's a Controlled</p> <p>8 Substance Act which has been in effect since 1970?</p> <p>9 A. Yes.</p> <p>10 Q. Now, if you go down about three-fourths</p> <p>11 of the way down the page, we get to a section, the</p> <p>12 title is "Principal Purpose" of the bill.</p> <p>13 A. I see that.</p> <p>14 Q. And do you see there, it says, "This</p> <p>15 legislation is designed to deal in a comprehensive</p> <p>16 fashion with the growing menace of drug abuse in</p> <p>17 the United States through providing authority for</p> <p>18 increased efforts in drug abuse prevention and</p> <p>19 rehabilitation of users, through providing more</p> <p>20 effective means for law enforcement aspects of</p> <p>21 drug abuse prevention and control, and by</p> <p>22 providing for an overall balanced scheme of</p> <p>23 criminal penalties for offenses involving drugs."</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>



<p style="text-align: right;">Page 30</p> <p>1 Q. Is that consistent with HBC's</p> <p>2 understanding of the purposes of the Controlled</p> <p>3 Substance Act?</p> <p>4 A. Yes.</p> <p>5 Q. If you would turn for me, please, to</p> <p>6 -005.</p> <p>7 And there -- at the top of the page you see</p> <p>8 Title 2, Control and Enforcement?</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. It says, "This bill provides for control</p> <p>12 by the Justice Department of problems related to</p> <p>13 drug abuse through registration of manufacturers,</p> <p>14 wholesalers, retailers, and all others in the</p> <p>15 legitimate distribution chain."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And for our purposes here today, you</p> <p>19 agree that HBC would be a wholesaler?</p> <p>20 A. Yes.</p> <p>21 Q. It goes on to say, "And it makes</p> <p>22 transactions outside the legitimate distribution</p> <p>23 chain illegal."</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 32</p> <p>1 and theft?</p> <p>2 A. I think it's obvious. To make sure</p> <p>3 medications and the drugs are going to the</p> <p>4 intended users, intended...</p> <p>5 Q. Turn to page -008 for me, please.</p> <p>6 The second full paragraph starts, "The bill</p> <p>7 is designed..."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. It says, "The bill is designed to</p> <p>11 improve the administration and regulation of</p> <p>12 manufacturing, distribution, and dispensing of</p> <p>13 controlled substances by providing for a closed</p> <p>14 system of drug distribution for legitimate</p> <p>15 handlers of such drugs."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. It says, "Such a closed system should</p> <p>19 significantly reduce the widespread diversion of</p> <p>20 these drugs out of legitimate channels into the</p> <p>21 illicit market."</p> <p>22 Is that consistent with your understanding of</p> <p>23 the purpose of the Controlled Substance Act?</p> <p>24 MR. BARNES: Same objection. Asking him</p> <p>25 to interpret the Controlled Substances Act.</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. What does that mean to HBC?</p> <p>2 MR. BARNES: I'm going to object to the</p> <p>3 extent you're asking him to interpret the</p> <p>4 Controlled Substances Act.</p> <p>5 He's not a lawyer. And it's outside the</p> <p>6 scope of the special master's ruling.</p> <p>7 THE WITNESS: These aren't my words.</p> <p>8 But certainly, from reading it, it would tell me</p> <p>9 closed system, and certainly setting up the</p> <p>10 framework of the interaction between the</p> <p>11 government and manufacturers, wholesalers,</p> <p>12 retailers.</p> <p>13 BY MR. GADDY:</p> <p>14 Q. Is HBC familiar with the concept of a</p> <p>15 closed system of distribution?</p> <p>16 A. Yes.</p> <p>17 Q. What does that mean?</p> <p>18 A. A closed system that has adequate</p> <p>19 controls to prevent diversion and theft, and</p> <p>20 making sure drugs are only -- prescription drugs</p> <p>21 are -- are in that closed system, and not -- and</p> <p>22 not ever outside of the system.</p> <p>23 Q. And why is that important?</p> <p>24 A. To prevent diversion and theft.</p> <p>25 Q. Why is it important to prevent diversion</p>	<p style="text-align: right;">Page 33</p> <p>1 You're asking for a legal interpretation.</p> <p>2 MR. GADDY: Bob, all you got to do is</p> <p>3 object. I don't need to hear his objections --</p> <p>4 your objections coming from him.</p> <p>5 MR. BARNES: Well, you may not need to</p> <p>6 hear it, but whoever is going to rule on it is</p> <p>7 going to hear it.</p> <p>8 MR. GADDY: You preserve your record by</p> <p>9 objecting.</p> <p>10 MR. BARNES: Yeah. And I'm going to put</p> <p>11 the full record.</p> <p>12 You're asking him to interpret the Controlled</p> <p>13 Substances Act, which the special master has said</p> <p>14 it's outside the purview of what you should be</p> <p>15 asking.</p> <p>16 THE WITNESS: Could you repeat your</p> <p>17 question, please?</p> <p>18 BY MR. GADDY:</p> <p>19 Q. Sure. It says, "Such a closed system</p> <p>20 should significantly reduce the widespread</p> <p>21 diversion of these drugs out of legitimate</p> <p>22 channels into the illicit market."</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Is that consistent with HBC's</p>

Page 34

1 understanding of the purpose of the Controlled  
 2 Substances Act?  
 3 MR. BARNES: Same objection.  
 4 Go ahead and answer.  
 5 THE WITNESS: As I read it here, it's to  
 6 keep drug distribution safe and secure and prevent  
 7 diversion and theft in a closed system.  
 8 BY MR. GADDY:  
 9 Q. My question is a little bit different.  
 10 Is that HBC's understanding?  
 11 A. For what I just said, yes. That's our  
 12 understanding, to have prescription drugs go to  
 13 legitimate -- where they need to go.  
 14 Q. I'm going to show you what I'm going to  
 15 mark as Exhibit No. 6.  
 16 (HBC-Tsipakis Exhibit 6 was marked.)  
 17 MR. GADDY: This is -- P-GEN-85 is our  
 18 internal number.  
 19 BY MR. GADDY:  
 20 Q. This is 21 USC Section 823.  
 21 Are you familiar with this code?  
 22 A. It's vaguely familiar.  
 23 Q. And you testified earlier that in order  
 24 to distribute any controlled substances, HBC had  
 25 to be registered by the DEA; correct?

Page 35

1 A. Correct.  
 2 Q. And you can start at the first page  
 3 there. Two-thirds down the page on the left side,  
 4 we have the registration requirement; correct?  
 5 A. The 823 heading?  
 6 Q. Correct.  
 7 A. Correct.  
 8 Q. And then it goes on. And the first one  
 9 that it talks about is manufacturers of controlled  
 10 substances. And they have to register, too;  
 11 correct?  
 12 A. Yes.  
 13 Q. If you turn the page for me, please, and  
 14 go to subsection (e).  
 15 A. Yes.  
 16 Q. There you see the distributors of  
 17 Schedule III, IV, and V controlled substances also  
 18 have to register with the DEA; is that correct?  
 19 A. Correct.  
 20 Q. It says, "The attorney general shall  
 21 register an applicant to distribute controlled  
 22 substances in Schedules III, IV, or V unless he  
 23 determines that the issuance of such registration  
 24 is inconsistent with the public interest."  
 25 Do you see that?

Page 36

1 A. Yes.  
 2 Q. And then they list the factors to  
 3 determine.  
 4 And the first factor is "The maintenance of  
 5 effective controls against diversion of particular  
 6 controlled substances into other than legitimate  
 7 medical, scientific, and industrial channels."  
 8 Do you see that?  
 9 A. Yes.  
 10 Q. You agree that HBC was required to  
 11 maintain effective controls against diversion of  
 12 controlled substances even if they were only  
 13 distributing III, IV, or V substances?  
 14 MR. BARNES: Objection.  
 15 BY MR. GADDY:  
 16 Q. Correct?  
 17 MR. BARNES: Same objection as prior.  
 18 THE WITNESS: Yes.  
 19 BY MR. GADDY:  
 20 Q. HBC didn't think that they weren't  
 21 required to have controls against diversion in  
 22 place because they were only distributing IIIs,  
 23 IVs, and Vs, did they?  
 24 A. No.  
 25 Q. Explain for me, please, from a wholesale

Page 37

1 distributor perspective as far as infrastructure,  
 2 security, logistics, are there different  
 3 requirements if you're distributing III, IV, and V  
 4 scheduled drugs versus Schedule II?  
 5 A. The requirements are commensurate on the  
 6 drugs that you're distributing.  
 7 In our case, we're distributing to our own  
 8 stores in a closed system. So the controls -- I  
 9 guess the controls -- I mean, the obligations  
 10 are the obligations we follow.  
 11 So can you specifically word your question?  
 12 Q. Sure. Maybe that was confusing.  
 13 I'm asking if logistically, from an  
 14 infrastructure, as far as security requirements or  
 15 vault requirements as it relates to the DEA, are  
 16 the requirements different for a distributor who  
 17 is distributing Schedule II drugs versus a  
 18 distributor who is distributing III, IVs, and V.  
 19 A. Thank you for the clarification. I  
 20 understand the question.  
 21 Yes, there is. Schedule IIs versus III  
 22 through V, there is a difference.  
 23 Q. Can you generally describe those  
 24 differences for me?  
 25 A. The differences, typically, the

<p style="text-align: right;">Page 38</p> <p>1 Schedule IIs are in a vault or a more -- the  2 security requirements are different. There's  3 tighter controls and tighter requirements needed  4 for Schedule II drugs.  5 Q. You mentioned a vault. Are there any  6 others that you're aware of?  7 A. Certainly, there's a whole host of them,  8 yes. But HBC never distributed Schedule II drugs.  9 Q. You mentioned the vault. Are there any  10 other additional requirements or controls that are  11 in place for Schedule IIs as opposed to  12 Schedule IIIs?  13 MR. BARNES: You mean generally or at  14 HBC?  15 MR. GADDY: Generally in the  16 regulations.  17 THE WITNESS: Yes.  18 BY MR. GADDY:  19 Q. Do you know any of them?  20 Are you able to tell us any other than the  21 vault?  22 A. I didn't prepare for those.  23 Q. So no?  24 A. No.  25 Q. Now, even though HBC did not distribute</p>	<p style="text-align: right;">Page 40</p> <p>1 what the entity structures are, he hasn't been  2 produced to respond to that.  3 BY MR. GADDY:  4 Q. You can answer the question.  5 A. Giant Eagle owns HBC. HBC is part of  6 Giant Eagle, so...  7 Q. Even though HBC is only shipping to the  8 store that owns it, to Giant Eagle, you agree  9 they're still required to follow the federal law,  10 federal regulations as it relates to the  11 Controlled Substance Act?  12 A. Of course, yes.  13 Q. I want to go back to No. 5, which was  14 the Controlled Substance Act.  15 Flip for me, please, to page 034. Do you see  16 there, under Section 2, where it says, "The  17 illegal importation, manufacture, distribution,  18 and possession, and improper use of controlled  19 substances have a substantial detrimental effect  20 on the public's health and general welfare."  21 Do you see that?  22 A. Yes.  23 Q. Does HBC agree with that?  24 MR. BARNES: Objection. Same objection.  25 Asking for a legal interpretation.</p>
<p style="text-align: right;">Page 39</p> <p>1 Schedule II drugs to Giant Eagle stores, Giant  2 Eagle pharmacies have dispensed Schedule II drugs  3 going back to 2006; correct?  4 A. Dispensed, yes; correct.  5 Q. And they would receive their Schedule II  6 drugs from wholesalers other than HBC?  7 A. Yes.  8 Q. They received Schedule II drugs from  9 McKesson?  10 A. Yes.  11 Q. From Anda?  12 A. Yes.  13 Q. Are there any other distributors that  14 supplied Giant Eagle pharmacies with Schedule II  15 drugs going back to 2006 that you're aware of?  16 A. No.  17 Q. You mentioned just a moment ago that HBC  18 was only distributing to Giant Eagle stores. I  19 think you said only to their own stores.  20 Is that how you said it?  21 A. Correct.  22 Q. So from your perspective, HBC and Giant  23 Eagle are the same -- are one in the same?  24 MR. BARNES: You mean legally?  25 If you're asking for a legal statement for</p>	<p style="text-align: right;">Page 41</p> <p>1 THE WITNESS: As I read it, illegal  2 importation, stressing illegal, yes, I would  3 agree.  4 BY MR. GADDY:  5 Q. Well, let me ask you: Forgetting that  6 this language is in the Controlled Substance Act,  7 does HBC agree with the statement that the illegal  8 distribution, possession, and improper use of  9 controlled substances has a substantial  10 detrimental effect on the public's health and  11 welfare?  12 MR. BARNES: Same objection. Beyond the  13 scope of Special Master Cohen's ruling.  14 THE WITNESS: Yes.  15 BY MR. GADDY:  16 Q. Does HBC agree that as a distributor, as  17 one of the links in the closed system of  18 distribution, that HBC plays a critical role in  19 preventing the diversion of controlled substances?  20 MR. BARNES: Same objection.  21 THE WITNESS: We have an obligation to  22 make sure diversion doesn't happen, sure.  23 BY MR. GADDY:  24 Q. Sure. But you agree that HBC plays a  25 critical role in that process.</p>

<p style="text-align: right;">Page 42</p> <p>1 A. We have an obligation and a role to make 2 sure the controlled substances that we distribute 3 stay in the closed system and get to the intended 4 recipient, yes. 5 Q. And that they not get to people who were 6 not the intended recipients; correct? 7 A. Yes. 8 Q. Do you agree that it was no secret that 9 drugs, opioids such as hydrocodone combination 10 products, have a great potential for abuse? 11 A. All drugs, if they're not used 12 appropriately, can have a detrimental effect. 13 But, certainly, hydrocodone products, if they're 14 abused, can have detrimental effects, sure. 15 Q. HBC had an understanding that 16 hydrocodone products were addictive before they 17 started distributing those drugs back in 2009; 18 correct? 19 A. As the -- HBC understands there's 20 different classes of drugs, Schedule II being the 21 most addictive other than Schedule I, and then the 22 further down the schedule, less addictive. 23 But, yes. Generally, yes. 24 Q. So HBC had an understanding that 25 hydrocodone combination products, like the ones we</p>	<p style="text-align: right;">Page 44</p> <p>1 A. It's vaguely familiar. 2 Q. Up in the upper left-hand corner, do you 3 see the seal, DEA seal? 4 A. Yes. 5 Q. And you consider the DEA to be a 6 trustworthy source for information about 7 controlled substances? 8 A. Sure, yes. 9 Q. And you recognize this to be a drug fact 10 sheet for the drug hydrocodone? 11 A. Yes. 12 Q. And you would agree the DEA is a 13 trustworthy source about which drugs are diverted 14 or abused more than other drugs? 15 A. Sure, yes. 16 Q. You see at the bottom of the page it 17 says this is from the Drug Enforcement 18 Administration and then has the DEA website there 19 at the bottom of the page. Do you see that? 20 A. Yes. 21 Q. Let's go to the very top part, the 22 overview. Do you see where it says, "Hydrocodone 23 is the most frequently prescribed opioid in the 24 United States and is associated with more drug 25 abuse and diversion than any other licit or</p>
<p style="text-align: right;">Page 43</p> <p>1 talked about earlier, whether it's Vicodin or 2 Lortabs, or anything that hydrocodone is combined 3 with, HBC had an understanding, even before they 4 began to distribute those drugs, that those drugs 5 were addictive and subject to abuse. 6 A. If they're misused, yes. 7 Q. And you would agree that HBC has always 8 had that knowledge and understanding? 9 MR. BARNES: Objection. 10 You, yourself, said this goes back to 2006, 11 and they didn't begin distributing until 2009. 12 BY MR. GADDY: 13 Q. Go ahead. 14 A. I think it's public knowledge, 15 certainly. HBC -- it's public knowledge certainly 16 that they can be addictive, sure. 17 Q. And that has been even before HBC 18 started distributing these drugs? 19 A. Sure. 20 Q. I'm done with that one. 21 I'm going to show you page N86, which I'm 22 going to mark as No. 7, I believe. 23 (HBC-Tsipakis Exhibit 7 was marked.) 24 BY MR. GADDY: 25 Q. Do you recognize this type of document?</p>	<p style="text-align: right;">Page 45</p> <p>1 illicit opioid." 2 Do you see that? 3 A. Yes. 4 Q. And was that HBC's understanding as 5 well? 6 MR. BARNES: Can we get a timeframe for 7 both this document and your question? 8 MR. GADDY: Sure. We'll get there. 9 THE WITNESS: So your question was 10 whether HBC knew the fact that it's the most 11 frequently prescribed opioid and whether it's the 12 one that's mostly abused? 13 BY MR. GADDY: 14 Q. Correct. 15 A. The exact fact of which ranks one or 16 two, et cetera, HBC understood that it's certainly 17 a drug that has had abuse certainly and it's high 18 on that list. Exactly whether it's number one, 19 number two, I can't answer whether we had that 20 position or not. 21 Q. Let's address the bottom of this. If 22 you go to the second page -- I don't think the 23 document has a date on it, but if you go to the 24 second page, do you see there's the heading Legal 25 Status in the United States?</p>

Page 46

1 A. Yes.  
2 Q. You see in the first line it says,  
3 "Hydrocodone is a Schedule II narcotic that is  
4 marketed in a multi-ingredient Schedule III  
5 product."  
6 Do you see that?  
7 A. Yes.  
8 Q. So that tells us that this document  
9 certainly predates the scheduling change; correct?  
10 A. Well, if it says hydrocodone is a  
11 Schedule II, that would mean that this would be  
12 post-October 2014; right?  
13 Q. Well, pure hydrocodone has always been  
14 Schedule II; right? It's the hydrocodone  
15 combination products that was III. Do you agree  
16 with that?  
17 A. Yes.  
18 Q. Does HBC have that understanding, that  
19 pure hydrocodone has always been a Schedule II  
20 narcotic?  
21 A. Yes.  
22 Q. Where it says that multi-ingredient  
23 products such as hydrocodone and acetaminophen  
24 would be a Schedule III product; correct?  
25 A. Yes.

Page 47

1 Q. So from this sentence, we know that this  
2 document predates the scheduling change; correct?  
3 A. Yes. Thank you.  
4 Q. Let's go back to the first page. Again,  
5 that first sentence says, "Hydrocodone is the most  
6 frequently prescribed opioid in the United States  
7 and is associated with more drug abuse and  
8 diversion than any other licit or illicit opioid."  
9 Do you see that?  
10 A. I do.  
11 Q. HBC from '09 to 2014 distributed  
12 hydrocodone combination products; correct?  
13 A. Yes.  
14 Q. And did HBC have an understanding that  
15 hydrocodone was associated with more drug abuse  
16 and diversion than any other opioid?  
17 MR. BARNES: Is the question what HBC  
18 distributed, hydrocodone combination products, or  
19 are you talking about hydrocodone as a Schedule  
20 II?  
21 MR. GADDY: I think my question was  
22 clear.  
23 THE WITNESS: Just to make sure I have  
24 it right, hydrocodone-containing products, so  
25 Schedule III; correct?

Page 48

1 BY MR. GADDY:  
2 Q. Yes.  
3 A. So generally, yes.  
4 Q. HBC had that understanding?  
5 A. Yes.  
6 Q. If you keep going down in that first  
7 paragraph, it says, "Its analgesic potency is  
8 similar to morphine."  
9 Did HBC have that understanding?  
10 A. Where it says "looks like"? I'm sorry.  
11 Where are you at?  
12 Q. I skipped a sentence. You can look up  
13 on the screen, too. He's got it highlighted for  
14 you.  
15 A. Oh, thank you.  
16 Q. I told you that before we started.  
17 A. Thank you. Yes, I see that.  
18 Q. And you actually have one here in front  
19 of you, too.  
20 A. I'm sorry. Thank you.  
21 Q. That even might be more helpful.  
22 A. That's much helpful. Thank you.  
23 Q. And HBC always had that understanding  
24 that the properties of hydrocodone is similar to  
25 morphine; correct?

Page 49

1 A. It's not exactly morphine, but it's  
2 similar, yes.  
3 Q. I'm going to skip another sentence.  
4 Then it says, "There are numerous brand and  
5 generic hydrocodone products marketed in the  
6 United States. All are combination products. The  
7 most frequently prescribed combination product is  
8 hydrocodone and acetaminophen," it says, "for  
9 example, Vicodin, Lorcet and Lortab."  
10 And those are some of the ones we talked  
11 about earlier that HBC distributed; correct?  
12 A. Correct.  
13 Q. It says, "Other examples of combination  
14 products include those containing aspirin,  
15 ibuprofen and antihistamines."  
16 Do you see that?  
17 A. Yes.  
18 Q. Again, those would have been the types  
19 of Schedule III narcotics that HBC distributed to  
20 Giant Eagle pharmacies; correct?  
21 A. Correct.  
22 Q. We talked a little bit about dates. I'm  
23 going to show you what I'm going to mark as  
24 Exhibit No. 8.  
25 (HBC-Tsipakis Exhibit 8 was marked.)



Page 50

1 MR. GADDY: This is going to be P-GEN-55  
 2 internally.  
 3 BY MR. GADDY:  
 4 Q. And if you look at the very first page,  
 5 do you see this is a report from the U.S. General  
 6 Accounting Office?  
 7 A. Yes.  
 8 Q. And if you read just below there, it's a  
 9 report to the Subcommittee on Oversight and  
 10 Investigations Committee on Energy and Commerce,  
 11 House of Representatives. Do you see that?  
 12 A. Yes.  
 13 Q. You recognize this as being a report to  
 14 Congress?  
 15 A. Yes.  
 16 Q. And over on the left-hand side of the  
 17 page, do you see the date of May 2002?  
 18 A. Yes.  
 19 Q. So this was a full little over seven  
 20 years before HBC began distributing hydrocodone  
 21 products; correct?  
 22 A. Yes.  
 23 Q. And the title of the report is  
 24 Prescription Drugs, and it looks like it's going  
 25 to spend most of its time talking about monitoring

Page 51

1 programs.  
 2 Do you see that?  
 3 A. Yes.  
 4 Q. And if you turn to .3, do you see it  
 5 starts with the date of May 17, 2002?  
 6 A. Yes.  
 7 Q. And then it starts in the body of the  
 8 letter, it says, "The increasing diversion of  
 9 prescription drugs for illegal use is a disturbing  
 10 trend in the nation's battle against drug abuse.  
 11 Prescription drug diversion is the channeling of  
 12 illicit pharmaceuticals for illegal purposes or  
 13 abuse."  
 14 Do you see that?  
 15 A. Yes.  
 16 Q. Do you know if HBC was aware of this  
 17 document when it began distributing hydrocodone  
 18 combination products in 2009?  
 19 A. I do not.  
 20 Q. They certainly could have been aware of  
 21 it if they wanted to; correct?  
 22 A. I suppose, yes.  
 23 Q. It goes on to say --  
 24 MR. BARNES: Object. Don't speculate.  
 25 If you know, you know.

Page 52

1 THE WITNESS: I don't know. I don't  
 2 know whether they were aware of it.  
 3 MR. GADDY: Bob, if you want to make an  
 4 objection, make an objection. Please don't tell  
 5 the witness how to answer the question. I want  
 6 his answers.  
 7 MR. BARNES: If you continue asking him  
 8 questions outside the agreed scope and  
 9 timeframe -- this is a 2002 document. HBC didn't  
 10 begin distributing --  
 11 MR. GADDY: Bob, if you want to have a  
 12 conversation off the record during a break, we can  
 13 do that.  
 14 MR. BARNES: Can you explain why you're  
 15 asking about a 2002 document?  
 16 BY MR. GADDY:  
 17 Q. Mr. Tsipakis, it goes on to say, "It can  
 18 involve activities such as doctor shopping by  
 19 individuals who visit numerous physicians to  
 20 obtain multiple prescriptions, illegal sales of  
 21 prescription drugs by physicians or pharmacists  
 22 and prescription forgery."  
 23 Do you see that?  
 24 A. Yes.  
 25 Q. Are those the types of -- is HBC aware

Page 53

1 that those are the types of issues that can lead  
 2 to diversion?  
 3 A. Sure, yes.  
 4 Q. It goes on to say, "The most frequently  
 5 diverted prescription drugs are those that are  
 6 prone to abuse, addiction and dependence, such as  
 7 hydrocodone, the active ingredient in Lortab and  
 8 many other drugs."  
 9 Do you see that?  
 10 A. Yes.  
 11 Q. It then goes on to mention several  
 12 others, but the first one it mentioned was  
 13 hydrocodone. And then it specifically referenced  
 14 a hydrocodone combination product; correct?  
 15 A. Correct.  
 16 Q. So was HBC aware going all the way back  
 17 to 2002, that hydrocodone products such as Lortab,  
 18 Vicodin that you mentioned earlier were some of  
 19 the most frequently diverted prescription drugs?  
 20 MR. BARNES: Object to form.  
 21 THE WITNESS: I think it was public  
 22 knowledge that those drugs were part of a drug  
 23 abuse problem and certainly being diverted.  
 24 BY MR. GADDY:  
 25 Q. And that was public knowledge and

Page 54

1 knowledge to HBC prior to when they got into the  
2 business of distributing these drugs in 2009;  
3 correct?  
4 MR. BARNES: Object to form.  
5 THE WITNESS: I can't -- I can't  
6 speculate on what HBC knew or didn't know, but...  
7 BY MR. GADDY:  
8 Q. Well, you agree it was public knowledge  
9 though?  
10 A. Yes.  
11 Q. Now, as a registrant under the  
12 Controlled Substance Act, HBC is aware that there  
13 are certain federal regulations that they must  
14 comply with; true?  
15 A. Yes.  
16 Q. And those regulations apply whether or  
17 not you're a distributor of Schedule II drugs or  
18 whether or not you're only a distributor of  
19 Schedules III, IV and V drugs; correct?  
20 A. Correct.  
21 Q. I'm going to show you what I'll mark as  
22 Exhibit No. 9.  
23 (HBC-Tsipakis Exhibit 9 was marked.)  
24 BY MR. GADDY:  
25 Q. This is -- you recognize this as being a

Page 55

1 document from the DEA website? I think you see  
2 the seal up in the top left corner.  
3 A. Yes.  
4 Q. And do you recognize that what we're  
5 looking at here comes from Title 21 of the Code of  
6 Federal Regulations and is Regulation 1301.74?  
7 Do you see that?  
8 A. Yes.  
9 Q. Is this a regulation that HBC is  
10 familiar with?  
11 A. Yes.  
12 Q. Is this a regulation that HBC  
13 understands that it must comply with as a  
14 distributor of controlled substances?  
15 A. Yes; one of many, but, yes, this  
16 particular one, yes.  
17 Q. And if you start in subsection (a), this  
18 regulation says, "Before distributing a controlled  
19 substance to any person who the registrant does  
20 not know to be registered to possess the  
21 controlled substance, the registrant shall make a  
22 good faith inquiry..."  
23 Do you see where I am there?  
24 A. Yes.  
25 Q. This really wasn't incredibly applicable

Page 56

1 to HBC because they were only distributing to  
2 Giant Eagle pharmacies; correct?  
3 A. Correct.  
4 Q. And obviously, HBC knew that all the  
5 Giant Eagle pharmacies were registered; correct?  
6 A. Yes.  
7 Q. If we go on to the next paragraph, it  
8 says, "The registrant shall design and operate a  
9 system to disclose to the registrant suspicious  
10 orders of controlled substances."  
11 Do you see that?  
12 A. Yes.  
13 Q. "The registrant shall inform the field  
14 division office of the Administration in his area  
15 of suspicious orders when discovered by the  
16 registrant. Suspicious orders include orders of  
17 unusual size, orders deviating substantially from  
18 a normal pattern, and orders of unusual  
19 frequency."  
20 Do you see that?  
21 A. Yes.  
22 Q. And did HBC have an understanding that  
23 prior to distributing any Schedule III narcotics  
24 or Schedule IV narcotics or Schedule V narcotics,  
25 that they had an obligation to design and operate

Page 57

1 such a system that would disclose suspicious  
2 orders?  
3 A. Yes.  
4 Q. And you agree that if HBC were to not  
5 design and operate such a system, they would be in  
6 violation of this regulation?  
7 MR. BARNES: Object to form.  
8 THE WITNESS: This is part of the  
9 security requirements, but certainly this is one  
10 component of the total -- the controlled substance  
11 security provision to be deemed compliant. So  
12 this is part of the overall security measures that  
13 you need to have, but yes.  
14 BY MR. GADDY:  
15 Q. So if they did design and operate a  
16 system to detect suspicious orders, they would be  
17 violating this regulation?  
18 MR. BARNES: Object to the form.  
19 THE WITNESS: They needed to have a  
20 system to disclose suspicious orders, yes, but it  
21 needs to be in concert with the other requirements  
22 as well.  
23 BY MR. GADDY:  
24 Q. But if they didn't have a system to  
25 detect suspicious orders, they would be in

<p style="text-align: right;">Page 58</p> <p>1 violation; correct?</p> <p>2 MR. BARNES: Object to form.</p> <p>3 THE WITNESS: They need to have a system</p> <p>4 to disclose suspicious orders, yes.</p> <p>5 BY MR. GADDY:</p> <p>6 Q. And if they don't, they'd be in</p> <p>7 violation; correct?</p> <p>8 MR. BARNES: Object to form.</p> <p>9 THE WITNESS: Potentially be in</p> <p>10 violation, yes.</p> <p>11 BY MR. GADDY:</p> <p>12 Q. How could they not have a system -- what</p> <p>13 do you mean by "potentially"? How could they not</p> <p>14 have a system and not be in violation?</p> <p>15 A. My understanding is you've given me one</p> <p>16 subsection of the security provision, and I</p> <p>17 believe the security provision has the registrant</p> <p>18 has different obligations within it.</p> <p>19 This particular piece that you're showing me</p> <p>20 is one of them, but it's one factor of the total.</p> <p>21 Your system needs to have a provision to disclose</p> <p>22 suspicious orders to the registrant, yes.</p> <p>23 Q. And if you don't have a system that</p> <p>24 discloses suspicious orders to the registrant, you</p> <p>25 would be violation of this regulation; correct?</p>	<p style="text-align: right;">Page 60</p> <p>1 substances or whether we're talking about Schedule</p> <p>2 III controlled substances; correct?</p> <p>3 A. Correct.</p> <p>4 Q. And HBC was aware of that back in 2009?</p> <p>5 A. Yes.</p> <p>6 Q. And was HBC aware back in 2009 that DEA</p> <p>7 was actively enforcing this regulation?</p> <p>8 A. HBC was generally aware that the DEA was</p> <p>9 enforcing all of it. I don't know its specific</p> <p>10 enforcement activities, but I would imagine they</p> <p>11 were enforcing all their provisions.</p> <p>12 Q. I'll show you what I'm going to mark as</p> <p>13 Exhibit No. 10.</p> <p>14 MR. GADDY: It's PGent 75 internally.</p> <p>15 (HBC-Tsipakis Exhibit 10 was marked.)</p> <p>16 BY MR. GADDY:</p> <p>17 Q. This is a document, if you see in the</p> <p>18 upper left-hand page, from the United States</p> <p>19 Attorney's Office out of Colorado. Do you see</p> <p>20 that?</p> <p>21 A. Yes.</p> <p>22 Q. And it looks like a press release that</p> <p>23 was posted on their website or something to that</p> <p>24 effect. Do you see that?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 59</p> <p>1 MR. BARNES: Object to form.</p> <p>2 THE WITNESS: Potentially, yes.</p> <p>3 BY MR. GADDY:</p> <p>4 Q. The word "potentially" is what I'm not</p> <p>5 understanding. How could you not have a system</p> <p>6 that discloses suspicious orders but still be in</p> <p>7 compliance with this?</p> <p>8 MR. BARNES: Same objection. You're</p> <p>9 asking him to interpret a regulation.</p> <p>10 MR. GADDY: You made your objection.</p> <p>11 THE WITNESS: You're asking me to broad</p> <p>12 brush a statement that is a section of code. This</p> <p>13 code has multiple provisions within it, and the</p> <p>14 suspicious order portion is one piece of it.</p> <p>15 I'm sorry if I'm not understanding your</p> <p>16 question.</p> <p>17 BY MR. GADDY:</p> <p>18 Q. We certainly agree that HBC had an</p> <p>19 obligation to design a system, operate a system</p> <p>20 that would disclose to the registrant, HBC,</p> <p>21 suspicious orders of controlled substances;</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. That obligation was in place whether</p> <p>25 we're talking about Schedule II controlled</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. You see under the black box there, it's</p> <p>2 got the date of October 2, 2008. Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And this was prior to HBC distributing</p> <p>5 any hydrocodone combination products; correct?</p> <p>6 A. Yes.</p> <p>7 Q. The heading there says "Cardinal Health</p> <p>8 Incorporated agrees to pay \$34 million to settle</p> <p>9 claims that it failed to report suspicious sales</p> <p>10 of widely abused controlled substances."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Was HBC aware of this settlement prior</p> <p>14 to it beginning to distribute controlled</p> <p>15 substances?</p> <p>16 A. I don't know.</p> <p>17 Q. It says in the first paragraph,</p> <p>18 "Cardinal Health, Inc., one of the nation's</p> <p>19 largest distributor of pharmaceutical drugs, has</p> <p>20 agreed to settle allegations that it violated</p> <p>21 federal reporting provisions relating to its</p> <p>22 handling of certain controlled substances</p> <p>23 regulated by the DEA. Under the agreement between</p> <p>24 the company and seven U.S. Attorney offices,</p> <p>25 Cardinal Health agreed to pay 34 million in civil</p>

<p style="text-align: right;">Page 62</p> <p>1 penalties for alleged violations of its  2 obligations under the Controlled Substance Act."  3 Do you see that?  4 A. Yes.  5 Q. In the next paragraph it goes to say,  6 "Cardinal Health, which operates 27 DEA registered  7 distribution facilities, failed to report to DEA  8 suspicious orders of hydrocodone that it then  9 distributed to pharmacies that filled illegitimate  10 prescriptions originating from rogue internet  11 pharmacy websites."  12 Do you see that?  13 A. Yes.  14 Q. Was HBC aware that in 2008, the DEA was  15 investigating and pursuing violation of the  16 regulation we just went over as it related to  17 distributors failing to report suspicious orders  18 of hydrocodone?  19 MR. BARNES: Object to form. Jeff, I'm  20 also going to ask you: What topic are you on?  21 You're asking him about a Cardinal Health  22 settlement agreement. He's not been produced to  23 talk about anything related to Cardinal.  24 BY MR. GADDY:  25 Q. You can answer the question.</p>	<p style="text-align: right;">Page 64</p> <p>1 a system to disclose suspicious orders for their  2 hydrocodone products, which would have been  3 scheduled as III under the Controlled Substance  4 Act, did HBC take into account the fact that  5 hydrocodone was the most commonly diverted and  6 abused pharmaceutical in the United States?  7 MR. BARNES: Object to form.  8 THE WITNESS: HBC -- HBC when setting up  9 to distribute controlled substances did their due  10 diligence and set up their system to follow the  11 law.  12 BY MR. GADDY:  13 Q. Did they take into account that they  14 were going to be distributing a drug which is the  15 most commonly diverted and abused controlled  16 pharmaceutical in the United States?  17 Did they take that into account when they set  18 up their system to disclose suspicious orders?  19 MR. BARNES: Object to form.  20 THE WITNESS: I don't know.  21 BY MR. GADDY:  22 Q. I'm going to show you what I'll mark as  23 Exhibit No. 11.  24 (HBC-Tsipakis Exhibit 11 was marked.)  25</p>
<p style="text-align: right;">Page 63</p> <p>1 MR. BARNES: Objection. Outside the  2 scope of the 30(b)(6) topics.  3 THE WITNESS: I'm not sure if HBC was  4 aware of the settlement or not.  5 BY MR. GADDY:  6 Q. If you skip down to the bottom of the  7 page, in the second to last paragraph, it says,  8 "Hydrocodone is the generic name..."  9 Do you see that?  10 A. I'm sorry. Where are you at?  11 Q. At the very bottom of the page.  12 A. Yes. I see it. Thank you.  13 Q. It says, "Hydrocodone is the generic  14 name of a prescription painkiller that is  15 classified under federal narcotics law as a  16 Schedule III controlled substance."  17 Do you see that?  18 A. Yes.  19 Q. Then in the next paragraph, it says,  20 "Hydrocodone is the most commonly diverted and  21 abused controlled pharmaceutical in the United  22 States."  23 Do you see that?  24 A. Yes.  25 Q. When HBC set about to design and operate</p>	<p style="text-align: right;">Page 65</p> <p>1 BY MR. GADDY:  2 Q. I'll represent to you this is a Reuters  3 article from April 2007. Do you see the date  4 there above the title?  5 A. Yes.  6 Q. The title is "AmerisourceBergen gets DEA  7 distribution halt order." Do you see that?  8 A. Yes.  9 Q. It goes on to say in the first paragraph  10 there that, "The U.S. Drug Enforcement  11 Administration has temporarily suspended its  12 Orlando, Florida distribution center's license to  13 distribute DEA controlled substances and listed  14 chemicals," talking about AmerisourceBergen.  15 Do you see that?  16 A. Yes.  17 Q. It goes on to say, "The DEA asserts that  18 AmerisourceBergen did not maintain effective  19 controls against diversion of controlled  20 substances, specifically hydrocodone."  21 Do you see that?  22 A. Yes.  23 Q. Did HBC take into account this  24 information that we've now seen with Cardinal  25 Health and now with AmerisourceBergen that the DEA</p>

<p style="text-align: right;">Page 66</p> <p>1 was investigating and sanctioning distributors for  2 not having systems that disclosed orders of  3 controlled substances?  4 Did HBC take that into account when designing  5 and operating their system that they put in place  6 prior to 2009?  7 MR. BARNES: Object to form. Outside  8 the scope of the 30(b)(6) topics.  9 THE WITNESS: I can't tell you --  10 MR. KOBRIN: I'll object to form, not  11 related to the scope of topics.  12 BY MR. GADDY:  13 Q. Go ahead.  14 A. I can't tell you if HBC had this in mind  15 or not.  16 MR. BARNES: Jeff, this says page 1 of  17 10. Are the other nine pages, are they deleted?  18 MR. GADDY: This is the end of the  19 article. The other nine pages were other  20 articles.  21 BY MR. GADDY:  22 Q. I want to go back to those combined  23 discovery responses. I think that was No. 4. Did  24 you find it?  25 A. Yes.</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. It goes on to say towards the end of  2 that first line, it says, "HBC responds that  3 though it distributes Schedule III opioids that  4 were reclassified as Schedule II in 2014, it only  5 distributed such opioids during the period that  6 they were classified as Schedule III opioids."  7 Do you see that?  8 A. Yes.  9 Q. As far as having a system -- as far as  10 the requirement that HBC have a system to disclose  11 suspicious orders, that's irrelevant, correct,  12 whether they were II or III at the time they were  13 distributed?  14 A. Correct.  15 Q. It then goes on to say, "And it has not  16 sold or distributed products to any pharmacies  17 other than Giant Eagle pharmacies."  18 Do you see that?  19 A. Yes.  20 Q. And, again, as far as the requirement  21 that HBC design and operate a system that  22 discloses suspicious orders, that's also  23 irrelevant; correct?  24 A. Yes.  25 Q. It then goes on, and there are five hash</p>
<p style="text-align: right;">Page 67</p> <p>1 Q. And if you would, turn for me again  2 please back to page 2. We already looked at that  3 question earlier this morning.  4 MR. GADDY: This is HBC 11 internally.  5 BY MR. GADDY:  6 Q. And you recall we looked at this  7 earlier. We're on .8. Did I say 2? I meant .8.  8 That's where question 2 is.  9 A. Okay.  10 Q. It says, "Please produce each of your  11 suspicious order monitoring system policies and  12 procedures since January 1, 2006 and identify the  13 Bates stamp range for each and please identify the  14 effective dates that each was in force and  15 effect."  16 Do you see that?  17 A. Yes.  18 Q. And if you turn to the next page, .9.  19 A. Yes.  20 Q. I'm going to start with the first full  21 paragraph on the page. Are you with me?  22 A. Starts "Subject to"?  23 Q. Correct. We got it up on the board  24 there.  25 A. Oh, yeah. Thank you.</p>	<p style="text-align: right;">Page 69</p> <p>1 marks down below where certain -- it looks like it  2 gives a Bates range, and then it describes a date  3 range for a policy that it's directing us to.  4 Do you see that?  5 A. Yes.  6 Q. Did you have anything to do with pulling  7 these policies and procedures that are identified  8 here?  9 A. Physically gathering them, is that your  10 question?  11 Q. Yeah.  12 A. I didn't specifically gather them, no.  13 Q. Did you point anybody in the direction  14 of where to find these?  15 A. Certainly we got the right subject  16 matter experts to point them in the direction,  17 yes.  18 Q. And if you look through here, this  19 identifies policies and procedures first beginning  20 in -- in the first hash mark, there's one that  21 says they're updating an 8/1/14 policy.  22 Do you see that in the first hash mark?  23 A. Yes. I see that.  24 Q. And as you go through the list or the  25 first one has another policy that's in place from</p>



Page 70

1 '15 to '16. The second hash mark talks about a  
2 policy that went into place in February of 2016.  
3 The third hash mark talks about a policy around  
4 the time period of February 2017. The fourth hash  
5 mark again is around February 2017, and the fifth  
6 hash mark is the same time period, February 2017.  
7 Do you see that?  
8 A. Yes.  
9 Q. And that's it. There's nothing on the  
10 next page; right?  
11 A. Correct.  
12 Q. From 2006 until August 1st of 2014, did  
13 HBC have any written suspicious order monitoring  
14 policy or procedure?  
15 MR. BARNES: Object to form.  
16 THE WITNESS: HBC had various written  
17 and unwritten policies in that process, in that  
18 timeframe.  
19 BY MR. GADDY:  
20 Q. Where are those?  
21 A. Specifically, I believe the written ones  
22 would have been produced. Is that what you're  
23 asking me? I'm sorry.  
24 Q. Let me make sure I'm being clear. You  
25 agree with me that what's identified here are

Page 71

1 policies beginning -- the earliest policy  
2 identified here is 8/1/14. Do you see that?  
3 A. It's pointing to a policy revision on  
4 8/1/14.  
5 Q. So what it says there is that there was  
6 a policy from April '15 to February '16; right?  
7 A. Yes.  
8 Q. And in parentheses it says that that's  
9 Version 2, and it's updating what presumably was  
10 Version 1 on 8/1/14. Do you see that?  
11 A. I see what's written there, yes.  
12 Q. So this is identifying -- the earliest  
13 policy identified here is August 1, 2014. Do you  
14 see that?  
15 A. Version 2 updating on 8/1/14, yes.  
16 Q. So my question to you, and if I said  
17 this wrong the last time, I'm sorry, but I'm  
18 asking whether or not HBC had any written  
19 suspicious order monitoring program, policy or  
20 procedure from 2006 until July 31, 2014.  
21 MR. BARNES: Object to form.  
22 THE WITNESS: Written policies? You're  
23 asking specific written policies?  
24 BY MR. GADDY:  
25 Q. Correct.

Page 72

1 A. I don't know.  
2 Q. In the 40 to 50 hours that you spent  
3 preparing to testify today on one of the topics  
4 being your past and present suspicious order  
5 monitoring systems program policy and procedures,  
6 you don't know whether or not HBC ever had a  
7 written suspicious order monitoring policy or  
8 procedure prior to July 31, 2014?  
9 A. I can't with certainty tell you they did  
10 or they didn't. That's what I'm telling you.  
11 Q. That's fair. We talked earlier about  
12 you had a duty to prepare for the deposition  
13 today; correct?  
14 A. Yes.  
15 Q. You took that duty seriously?  
16 A. Absolutely.  
17 Q. You made a good faith effort to be able  
18 to come in here and be prepared to testify and be  
19 prepared to answer all the questions that you were  
20 supposed to be prepared to answer; correct?  
21 A. Of course.  
22 Q. And you spent 40 to 50 hours getting  
23 ready for this?  
24 A. Yes.  
25 Q. You talked to different subject matter

Page 73

1 experts within Giant Eagle or HBC about the topics  
2 that you needed to testify on today?  
3 A. Yes.  
4 Q. And as a result of that preparation, you  
5 don't know whether or not HBC ever had a written  
6 suspicious order monitoring policy or procedure in  
7 place from 2006 through July 31, 2014; is that  
8 correct?  
9 MR. BARNES: Object to form. Asked and  
10 answered about three times.  
11 Go ahead.  
12 THE WITNESS: I couldn't find whether  
13 there was or there wasn't written policies. For  
14 that timeframe that you're asking me, I'll answer  
15 it again, I don't know.  
16 BY MR. GADDY:  
17 Q. When did HBC begin distributing Schedule  
18 III controlled substances?  
19 A. HBC began distributing Schedule III in  
20 late 2009.  
21 Q. And when did HBC stop distributing  
22 Schedule III controlled substances? Let me back  
23 up and reask that.  
24 When did HBC stop distributing hydrocodone  
25 combination products that were rescheduled to

<p style="text-align: right;">Page 74</p> <p>1 Schedule II?</p> <p>2 A. The effective date of when hydrocodone</p> <p>3 was rescheduled from class III to class II, which</p> <p>4 I believe was around October of 2014.</p> <p>5 Q. So HBC distributed hydrocodone</p> <p>6 combination products from November 2009 through</p> <p>7 approximately October 2014; correct?</p> <p>8 A. Correct.</p> <p>9 Q. And the first written suspicious order</p> <p>10 monitoring policy or procedure that HBC is aware</p> <p>11 of went into effect August 1, 2014; correct?</p> <p>12 A. I'll answer again that those are the</p> <p>13 policies we were able -- I was able to find. I</p> <p>14 don't know if there was or there wasn't, but...</p> <p>15 Q. As far as you know, as far as HBC knows,</p> <p>16 the first suspicious order monitoring policy or</p> <p>17 procedure that they had was August 1, 2014?</p> <p>18 A. Again, the first one that I'm able to</p> <p>19 produce written was August 2014.</p> <p>20 Q. But it's more than that. It's the first</p> <p>21 one you know about that's written; correct?</p> <p>22 A. It's the first written policy. It</p> <p>23 doesn't mean there wasn't others. I don't know.</p> <p>24 Q. It's the first written policy that you</p> <p>25 know about?</p>	<p style="text-align: right;">Page 76</p> <p>1 into just one exhibit so we can look at them all</p> <p>2 at the same time in No. 12. Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And as you flip through, you'll see that</p> <p>5 I just put a blue piece of paper between the</p> <p>6 different documents so we can kind of tell when</p> <p>7 one ends and one begins. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. So the first document we see here is</p> <p>10 entitled Inventory Control Suspicious Order</p> <p>11 Policy. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And it actually has a Giant Eagle header</p> <p>14 on it, not an HBC; do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Can you explain why it would have a</p> <p>17 Giant Eagle header on it as opposed to HBC at this</p> <p>18 time?</p> <p>19 A. I cannot.</p> <p>20 Q. Would it be uncommon for HBC to rely on</p> <p>21 documents generated by or policies generated by</p> <p>22 Giant Eagle?</p> <p>23 A. It's the same corporation, if that's</p> <p>24 what you're...</p> <p>25 Q. So it's not unusual or surprising to you</p>
<p style="text-align: right;">Page 75</p> <p>1 A. Yes.</p> <p>2 MR. GADDY: This might be a good time to</p> <p>3 take a break.</p> <p>4 THE VIDEOGRAPHER: 10:32. We are off</p> <p>5 the video record.</p> <p>6 (Recess from 10:32 a.m. to 10:48 a.m.)</p> <p>7 THE VIDEOGRAPHER: 10:48. We're on the</p> <p>8 video record.</p> <p>9 (HBC-Tsipakis Exhibit 12 was marked.)</p> <p>10 BY MR. GADDY:</p> <p>11 Q. Mr. Tsipakis, I'm going to hand you what</p> <p>12 I've marked as Exhibit No. 12. I'll represent to</p> <p>13 you -- if you want to pull back out No. 4, which</p> <p>14 was the combined discovery responses, I'll</p> <p>15 represent to you what I've done is compiled all</p> <p>16 the documents that were listed in those five hash</p> <p>17 marks.</p> <p>18 A. I'm sorry. I'm pulling back Exhibit 4?</p> <p>19 Q. Sure. If you want to check me, what</p> <p>20 I've done is I've compiled -- do you remember in</p> <p>21 the response to No. 2 there were the five dashes</p> <p>22 that listed different ranges of documents that</p> <p>23 were written about those policies?</p> <p>24 A. Yes.</p> <p>25 Q. What I've done here is compiled those</p>	<p style="text-align: right;">Page 77</p> <p>1 this has got Giant Eagle letterhead and it's</p> <p>2 related to distribution?</p> <p>3 A. Oh, no.</p> <p>4 Q. Again, we see on the left side that the</p> <p>5 effective date, so I guess the first time the</p> <p>6 policy went into place, was August 1, 2014. Do</p> <p>7 you see that?</p> <p>8 A. Yes.</p> <p>9 Q. If we go to the right-hand column, we</p> <p>10 see this is Version 2?</p> <p>11 A. Yes.</p> <p>12 Q. Do you see that? And the revision date</p> <p>13 that relates to this document is April 9, 2015.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And the purpose of this policy was to</p> <p>17 identify, investigate, record and report</p> <p>18 suspicious pharmaceutical product orders; correct?</p> <p>19 A. Yes.</p> <p>20 Q. And other than the first version of this</p> <p>21 policy that would have come out August 1, 2014,</p> <p>22 you're not aware of any earlier written policy</p> <p>23 other than the one that we're looking at here?</p> <p>24 A. I could not find any earlier policy,</p> <p>25 written policy.</p>

<p style="text-align: right;">Page 78</p> <p>1 Q. And the policy it identifies here, it          2 says, "Identify individuals from Giant Eagle          3 sourcing, pharmacy compliance and HBC team members          4 must review pharmacy customer orders and order          5 trends on a regular and for-cause basis to          6 identify suspicious drug orders."          7 Do you see that?          8 A. Yes.          9 Q. It goes on to say, "Suspicious orders          10 are blocked and reported to the appropriate          11 regulatory authority within the specified time          12 range."          13 Do you see that?          14 A. Yes.          15 Q. Then in the procedures below, under the          16 second bullet point, it lists the criteria that          17 are used to determine whether or not an order is          18 suspicious.          19 Do you see that?          20 A. Yes.          21 Q. The first thing that it lists is          22 purchases over a threshold?          23 A. Yes.          24 Q. And then it talks about orders of          25 unusual quantities or size compared to a</p>	<p style="text-align: right;">Page 80</p> <p>1 the same policy as before, same effective date of          2 8/1/14. Do you see that?          3 A. Yes.          4 Q. And if you look over there, this is now          5 the third version of the policy. This is updating          6 what we just looked at; right?          7 A. Yes.          8 Q. And the date of this update is          9 February 26, 2016. Do you see that?          10 A. Yes.          11 Q. As far as I could tell, the only          12 substantive update here is under scope where it          13 talks about who the policy applies to, and this is          14 the first time we see the acronym GERXDC.          15 Do you see that?          16 A. Yes.          17 Q. What does that mean?          18 A. It's the Giant Eagle RX DC.          19 Q. DC for distribution center?          20 A. Yes.          21 Q. So is this entity a Giant Eagle entity?          22 A. It's owned by Giant Eagle, yes.          23 Q. And is this entity licensed to          24 distribute Schedule II, III, IV and V narcotics?          25 A. Yes.</p>
<p style="text-align: right;">Page 79</p> <p>1 customer's order history. Do you see that?          2 A. Yes.          3 Q. Next one is unique patterns of orders          4 that differ from similar customers?          5 A. Yes.          6 Q. And the next is orders outside of the          7 normal pharmacy customer ordering process;          8 correct?          9 A. Yes.          10 Q. Again, this is a policy that this          11 revision date is April 9, 2015; correct?          12 A. That's what it says, yes.          13 Q. I'm going to flip to the next one, which          14 is .4.          15 A. The next?          16 Q. It should be .4 at the top, top          17 right-hand corner.          18 A. Yeah, I see it.          19 MR. GADDY: Still on 812 internally.          20 BY MR. GADDY:          21 Q. Do you see here of the top it looks like          22 the same doc and policy, Giant Eagle inventory          23 control suspicious order policy. Do you see that?          24 A. Yes.          25 Q. If we look at the effective date, it's</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. And does it, in fact, distribute          2 Schedules II, III, IV and V narcotics to Giant          3 Eagle pharmacies?          4 A. Yes.          5 Q. And is this timeframe, February of 2016,          6 approximately when that facility went online?          7 A. Yes.          8 Q. Would this also be the time period that          9 HBC stopped distributing prescription medication          10 to Giant Eagle pharmacies?          11 A. Yes.          12 Q. And that's why if we look at who this          13 applies to, we don't see anybody from HBC anymore?          14 A. Yes.          15 Q. Go to -- I'm on .7 of the same document.          16 And this looks like a slightly different policy.          17 Again, this is a Giant Eagle document. Do you see          18 that?          19 A. Yes.          20 Q. And the title listed is Order Monitoring          21 System Policy. Do you see that?          22 A. Yes.          23 Q. And the effective date is February 2,          24 2017; is that correct?          25 A. Yes.</p>

<p style="text-align: right;">Page 82</p> <p>1 Q. And if you look up in the top right-hand 2 column, this is the first version of this policy 3 that's existed; correct? 4 A. Yes. 5 Q. And you're not aware of any order 6 monitoring system policy and any written order 7 monitoring system policy that Giant Eagle or HBC 8 ever had prior to February 2, 2017, are you? 9 A. I could not find any other written 10 policy, no. 11 MR. BARNES: Jeff, do you mean other 12 than this one otherwise attached that we've 13 already gone over? 14 MR. GADDY: Sure. Well, my question was 15 order monitoring system policy. I think the other 16 one was suspicious order policy. Two different 17 iterations. 18 MR. BARNES: well, you'll get into the 19 substance. 20 BY MR. GADDY: 21 Q. If you look under Scope, it says, "This 22 procedure applies to the Giant Eagle order 23 monitoring system team." 24 Do you see that? 25 A. Yes.</p>	<p style="text-align: right;">Page 84</p> <p>1 identify whether or not orders of controlled 2 substances are suspicious? 3 A. Yes. 4 Q. And if you see under the third bullet 5 point, it says that the OMS -- and OMS stands for 6 order monitoring system? 7 A. Um-hum. Yes. 8 Q. It says, "OMS uses algorithms to 9 identify controlled substance orders that require 10 investigation and documentation before releasing 11 the order for distribution." 12 Do you see that? 13 A. Yes. 14 Q. Then it goes down, and it gives some 15 indicators that are taken into account, such as 16 the pharmacy location, the chemical involved, the 17 generic product indicator, NDC, and order of 18 patterns. Do you see that? 19 A. Yes. 20 Q. And then in the next bullet point, it 21 talks about the different levels of review that 22 this February 2, 2017 policy put into place. 23 Do you see that? 24 A. Yes. 25 Q. It talks about reviewing the order,</p>
<p style="text-align: right;">Page 83</p> <p>1 Q. Are you familiar with that team? 2 A. Yes. 3 Q. And this team that was established in 4 this 2017 policy, describe for us what that team 5 is. 6 A. I'm going to take a minute to read the 7 scope if that's okay. 8 Q. Sure. 9 A. Okay. It's a cross-functional team that 10 involves all the different constituents listed 11 there that help monitor our drug orders. 12 Q. Do you have any involvement on that 13 team? 14 A. Yes. 15 Q. Which of these roles do you serve in? 16 A. Can you describe what you mean by 17 "serve"? So all these areas report ultimately up 18 to me. 19 Q. So you have direct reports that are 20 directly involved in this? 21 A. Yes, sir. 22 Q. So as we get down into the procedure of 23 this policy, does this get into some of the 24 details on some of the different datapoints that 25 are used in this February 2, 2017 policy to</p>	<p style="text-align: right;">Page 85</p> <p>1 potentially blocking the order, logging the order 2 into an investigation log. Do you see all that? 3 A. Yes. 4 Q. If you go down to -- there's a series 5 of -- I guess about a quarter of the way down the 6 page, it talks about the approver level review 7 process includes notification the store exceeded 8 its threshold. Do you see where I am? 9 A. Yes. 10 Q. And then it goes on to say what the 11 approver would review. And it lists below there 12 different factors that an approver would look at. 13 Do you see that? 14 A. Yes. 15 Q. And it talks about the -- I'm on .8. 16 I'm sorry. I'm in the middle of the page there 17 with the series of about seven bullet points. You 18 see it indicates the geographical prescription 19 provider mapping, geographical patient mapping, 20 pharmacy district leader consultation. 21 Do you see that list of factors there? 22 A. Yes. 23 Q. And those are all factors that were put 24 in place in this February 2, 2017 order monitoring 25 policy; correct?</p>



<p style="text-align: right;">Page 86</p> <p>1 A. Pursuant to this policy. But these are  2 things we've been doing all along. This was the  3 creation of a threshold -- an addition of a  4 threshold screen onto our process.  5 Q. So explain to me the geographical  6 prescription provider mapping. What does that  7 mean?  8 A. So how I understand it is basically  9 looking at where the prescription -- so the  10 prescriber, where is the prescriber located and  11 then where our pharmacy is located.  12 Q. And the patient mapping, same concept,  13 where is the patient versus where is the pharmacy?  14 A. Yes, sir, and the physician, provider.  15 Q. The next bullet point, pharmacy district  16 leader consultation, explain what that means.  17 A. So the pharmacy district leader is our  18 district manager and any conversations or  19 investigative information they would have had  20 consulting with the store.  21 Q. The next one talks about store threshold  22 increase request form. Do you see that?  23 A. Yes.  24 Q. Tell me what that means.  25 A. So there's instances where there's</p>	<p style="text-align: right;">Page 88</p> <p>1 yes.  2 Q. When you say these were factors that  3 were instituted for many years, you're not saying  4 that there was ever a policy, a written policy in  5 place to look at whether or not the percentages of  6 controlled substances paid for in cash versus with  7 coverage; correct?  8 A. What I'm saying is the things that are  9 listed here are not absolute that they only  10 started happening on the date that's listed on  11 this policy. Our pharmacists as well as our  12 corporate folks had information whether  13 prescriptions were paid for cash or third party.  14 That's what I'm saying.  15 Q. Are you making a representation, are you  16 testifying that information as far as whether it  17 was cash or third-party payer, that that was  18 information that HBC was always using in their  19 suspicious order monitoring program?  20 A. No. I'm pointing out that what's listed  21 here, it's not an absolute that these things only  22 started happening on the date listed on this  23 policy.  24 Q. You said that the pharmacies have always  25 had access to that type of information as far as</p>
<p style="text-align: right;">Page 87</p> <p>1 legitimate needs to increase the threshold, and  2 there would be a request made. This is the  3 attempt to put everything in writing. And  4 certainly if a request was needed, it would be  5 sent in, and it would be looked at.  6 Q. Is that talking about an increase to the  7 threshold from a Giant Eagle distribution facility  8 or an outside distributor such as McKesson or  9 Anda?  10 A. It entails both. Specifically this  11 one -- both follow a similar process, but this one  12 here is predominantly our internal.  13 Q. The next factor listed is payment type  14 analysis, cash versus managed care. What does  15 that mean?  16 A. So whether the prescription is paid for  17 by an insurance or a patient pay, direct patient  18 pay.  19 Q. And that's something -- that's some  20 analysis that went into place with this  21 February 2, 2017 policy?  22 A. This is encapsulating, yes. These were  23 always factors that -- the lens that they were  24 looking at for many years, but this is  25 establishing in written form documenting those,</p>	<p style="text-align: right;">Page 89</p> <p>1 cash versus third-party payer.  2 A. Of course, yes.  3 Q. That's something the pharmacies had  4 access to going back to before 2009 when HBC first  5 started distributing Schedule III substances;  6 correct?  7 A. I think it's obvious that a pharmacist  8 would know a customer whether they pay cash or if  9 it's run through insurance, sure.  10 Q. And that's the type of information that  11 HBC could get from the Giant Eagle pharmacies;  12 correct?  13 A. If necessary, yes.  14 Q. And the pharmacy would also have  15 information about the provider that wrote any  16 prescriptions; correct?  17 A. Pharmacists would have information from  18 the provider, yeah.  19 Q. They would have information about the  20 address and the residence of the patient?  21 A. The patient would tell us their address,  22 sure.  23 Q. The pharmacy would have information  24 about the percentages of controlled substances  25 that they dispense versus the percentages of</p>



<p style="text-align: right;">Page 90</p> <p>1 noncontrolled substances they dispense?</p> <p>2 A. Could they get that? Yes, yes.</p> <p>3 Q. And that's all information that Giant</p> <p>4 Eagle pharmacies have always had available to them</p> <p>5 and that HBC could have always had available to it</p> <p>6 going back to the time that they first began</p> <p>7 distributing controlled substances?</p> <p>8 A. Yes. Certainly in our system, the</p> <p>9 pharmacists play a key role in their professional</p> <p>10 judgment filling legitimate prescriptions, yes.</p> <p>11 Those are all factors.</p> <p>12 Q. The very last bullet point on this page</p> <p>13 says, "The OMS review committee consists of the</p> <p>14 following team members."</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And then it lists some of the same</p> <p>18 divisions that we talked about earlier and you</p> <p>19 have some direct reports that are within those?</p> <p>20 A. Yes.</p> <p>21 Q. The last one listed is legal counsel.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Is there any particular person, any</p> <p>25 particular legal counsel who is involved in the</p>	<p style="text-align: right;">Page 92</p> <p>1 compliance obligations under the Controlled</p> <p>2 Substance Act for HBC or Giant Eagle.</p> <p>3 MR. BARNES: Same objection.</p> <p>4 THE WITNESS: Legal counsel is counsel</p> <p>5 in multiple areas of the business. Certainly this</p> <p>6 is one of them, sure.</p> <p>7 BY MR. GADDY:</p> <p>8 Q. Compliance with the Controlled Substance</p> <p>9 Act and compliance with the regulation we looked</p> <p>10 at earlier regarding having a suspicious order</p> <p>11 monitoring program would be some of the areas that</p> <p>12 are discussed with the two legal counsel that you</p> <p>13 just mentioned?</p> <p>14 A. Sure, in addition to the normal pharmacy</p> <p>15 practice and everything else, sure.</p> <p>16 Q. If you turn to the -- go to .11.</p> <p>17 A. Yes.</p> <p>18 Q. This document didn't have a date on it,</p> <p>19 but the written responses we looked at there in</p> <p>20 No. 4 represented that this was a February 2017ish</p> <p>21 document. Is that consistent with your</p> <p>22 understanding?</p> <p>23 A. Forms of this document was floating in</p> <p>24 the organization well before that. So this might</p> <p>25 have been -- I can't tell you -- without a date I</p>
<p style="text-align: right;">Page 91</p> <p>1 suspicious order monitoring program?</p> <p>2 A. Sure. Our internal counsel and then</p> <p>3 where needed, external counsel.</p> <p>4 Q. What's the -- first of all, how many</p> <p>5 internal counsel?</p> <p>6 A. Two to three internal lawyers.</p> <p>7 Q. And can you tell me their names?</p> <p>8 A. Robbi Robinson and Loreen Wiechelt.</p> <p>9 Q. And are those legal counsel often</p> <p>10 involved in compliance issues as it relates to the</p> <p>11 suspicious order monitoring program?</p> <p>12 A. They're involved in all areas of</p> <p>13 compliance, yes.</p> <p>14 Q. And do they answer questions from you or</p> <p>15 from your direct reports involved in this process</p> <p>16 as it relates to HBC or Giant Eagle's obligations</p> <p>17 with the Controlled Substance Act?</p> <p>18 MR. BARNES: I'm going to object to the</p> <p>19 extent it's calling for privileged information.</p> <p>20 You can answer.</p> <p>21 BY MR. GADDY:</p> <p>22 Q. I'm just asking for "yes" or "no." I'm</p> <p>23 not asking about the substance of any</p> <p>24 conversations right now. I'm asking whether or</p> <p>25 not those legal counsel ever ask questions about</p>	<p style="text-align: right;">Page 93</p> <p>1 can't tell you if this was updated or when it was</p> <p>2 updated or not. But this type of information was</p> <p>3 issued well before '17.</p> <p>4 Q. You've already told me you don't know</p> <p>5 whether or not there was any written suspicious</p> <p>6 order monitoring policy prior to August 1st of</p> <p>7 2014; correct?</p> <p>8 A. That I could find, yes.</p> <p>9 Q. If you turn to -- it's going to be .15.</p> <p>10 This is the flowchart that frankly is not very</p> <p>11 legible. But you see at the top of the page that</p> <p>12 this is a status of the monitoring procedure as of</p> <p>13 October 17, 2016?</p> <p>14 A. Yes. This is a flow diagram from IT</p> <p>15 enhancements within the system, but it outlines</p> <p>16 how the process works.</p> <p>17 Q. But the date on the document is</p> <p>18 October 2016; correct?</p> <p>19 A. 10/17/16, yes.</p> <p>20 Q. HBC at that point hadn't distributed</p> <p>21 hydrocodone combination products for two years;</p> <p>22 correct?</p> <p>23 A. Yes, correct.</p> <p>24 Q. So this document would have been in</p> <p>25 place as it relates to the Giant Eagle RX</p>

Page 94

1 distribution center; correct?

2 A. Yes. Yes.

3 Q. So you've told me that you're unaware of

4 any written suspicious order monitoring policy

5 that HBC had from 2009 till August 1, 2014.

6 Did HBC have a system prior to August 2014

7 that was designed and operated to disclose

8 suspicious orders of controlled substances?

9 A. Yes.

10 Q. And can you describe that system for me,

11 please?

12 A. Sure. The system in our situation is a

13 captive warehouse. We had tight controls over our

14 inventory, our controlled substance inventory, our

15 procedures and our controls at our warehouse

16 operation, and also at our pharmacies, the

17 pharmacy operation.

18 Q. Let me be more specific. Other than

19 inventory controls, what were the controls that

20 would allow HBC to identify an order as

21 suspicious?

22 A. So the warehouse, in addition to its

23 physical security and controls, would also have

24 audits that it did, daily audits, monthly audits.

25 It understands the patterns of shipments to our

Page 95

1 locations, and it could identify deviations from

2 those patterns.

3 Q. How frequently were audits performed?

4 A. Daily.

5 Q. What was the purpose of an audit?

6 A. To ensure the safety and security of the

7 drug product. And, again, in that closed system

8 we talked about earlier, to make sure the product

9 was not diverted and going to its intended

10 recipient.

11 Q. Your testimony is that from

12 November 2009 until the end of Octoberish of 2014,

13 that HBC performed daily audits of the warehouse?

14 A. Daily audits of the counts in the

15 warehouse, yes.

16 Q. And the purpose of the counts in the

17 warehouse was to make sure that everything that

18 was supposed to be in the warehouse was actually

19 there?

20 A. Um-hum, yes.

21 Q. You also mentioned that the warehouse

22 was aware of ordering patterns I think is how you

23 said it from the Giant Eagle pharmacies?

24 A. Um-hum.

25 Q. Yes?

Page 96

1 A. Yes. Sorry, yes.

2 Q. Who at the warehouse was aware of the

3 ordering patterns?

4 A. So the warehouse had a superintendent of

5 the warehouse. There was specialized, highly

6 trained individuals that worked the controlled

7 substance cage that were the same folks that

8 picked the orders day in and day out.

9 Q. From 2009 until October 2014, was there

10 one superintendent of the warehouse, or were there

11 multiple?

12 A. I believe there was one.

13 Q. And who was that?

14 A. Walter Durr.

15 Q. So you said below Walter, there would

16 have been I think what you referred to as pickers?

17 A. Folks who would fulfill the orders, yes.

18 Q. In laymen's terms, can you describe to

19 me what a picker does?

20 A. Sure. An order comes in. And for

21 whatever product they need to get, they go to the

22 shelf, the particular shelf in the warehouse, and

23 they pick the order.

24 Q. Is it as simple as walking to a shelf

25 and there's a bottle of pills on the shelf, and

Page 97

1 they pick up the bottle? Break it down for me,

2 please.

3 A. There's a system certainly that there's

4 an order well that generates what each store needs

5 or has requested. And then there's assistance, a

6 device that they -- I don't know the exact name

7 for it, but there's certainly a warehouse

8 management system that they use. And it's

9 different slotting in the warehouse and they know

10 which slot to go to and how many to pick.

11 Q. And then what? They drop it in the tote

12 and put it on a truck?

13 A. Yes.

14 Q. And approximately -- let me back up.

15 How many different warehouses did HBC have

16 that were responsible for distributing Schedule

17 III narcotics?

18 A. There's only one warehouse.

19 Q. And what's the address for that

20 warehouse, for HBC's warehouse?

21 A. I can't give you the exact -- I don't

22 know the exact address.

23 Q. You know do the name of the road?

24 A. No.

25 Q. Approximately how many pickers would

Page 98

1 have been working under Walter Durr in the  
2 warehouse?  
3 A. My understanding is three to four.  
4 Q. And do you know if it was the same three  
5 or four people during the lifetime of HBC serving  
6 as a distributor of hydrocodone combination  
7 products?  
8 A. I don't know if it was the same all the  
9 way throughout.  
10 Q. Who were those people?  
11 A. I don't know their names.  
12 Q. Are any of them still that?  
13 A. The warehouse is no longer there  
14 anymore, so no.  
15 Q. Did any of those people transfer over to  
16 the Giant Eagle RX distribution center?  
17 A. I don't know.  
18 Q. Anybody else who -- I think my original  
19 question was who would have been aware these  
20 patterns of shipments, and you told me Mr. Durr.  
21 Then you told me the pickers as well as; correct?  
22 Anybody else that would have been aware of  
23 the patterns of shipments to Giant Eagle  
24 pharmacies?  
25 A. From the warehouse is your question?

Page 99

1 Q. This is all getting back to  
2 identification of suspicious orders. So my  
3 question is: From HBC who had that obligation to  
4 identify suspicious orders? And I think you've  
5 identified Mr. Durr and these pickers. But if I'm  
6 missing somebody, I want you to tell me.  
7 A. So in our suspicious orders would have  
8 been identified certainly from the warehouse,  
9 certainly folks in corporate that were -- from the  
10 procurement team buying into the warehouse. They  
11 would know if there's any spike in pattern of  
12 product being demanded to be shipped to the  
13 warehouse, et cetera.  
14 It's not just the warehouse. It's also the  
15 folks that do the procurement of these products as  
16 well would identify any deviation. If all of a  
17 sudden they're buying X and now they're being  
18 asked to buy Y, they would identify that.  
19 Q. Was there any written list of items that  
20 these people in procurement or people like  
21 Mr. Durr, the superintendent of the warehouse,  
22 were supposed to be on the lookout for?  
23 A. Not that I could find.  
24 Q. Was there any report that was generated  
25 on a daily, weekly, monthly, yearly basis,

Page 100

1 quarterly basis that Mr. Durr or these procurement  
2 people could look at to evaluate the pattern of  
3 orders?  
4 A. I'm sorry. Can you ask that again?  
5 Q. What I'm asking about is whether or not  
6 there was any report that was generated daily or  
7 weekly or monthly or quarterly or annually that  
8 was kind of on a set basis distributed to anybody,  
9 whether it's Mr. Durr, whether it's these people  
10 from procurement, whether it's the pickers, to  
11 where they can have an opportunity to look at and  
12 review the pattern of orders going to each of the  
13 different pharmacies.  
14 A. Not that I could find specifically, but  
15 certainly from the procurement side, et cetera,  
16 there's reports of what they're buying and  
17 selling, sure.  
18 Q. Explain to me what you mean by the  
19 procurement side.  
20 A. So from the procurement side, the folks  
21 in the warehouse don't do purchasing. There's a  
22 group that does purchasing. So those folks that  
23 do purchasing would absolutely know what's being  
24 bought and what's being sold.  
25 Q. And who were those folks from 2009

Page 101

1 through 2014?  
2 A. The specific people I don't know.  
3 Q. Are any of them still with the company?  
4 A. I don't know the folks that were  
5 involved.  
6 Q. Was there a list that these folks in the  
7 procurement or purchasing office had to be on the  
8 lookout for as far as trends or spikes or anything  
9 like that that they should flag and bring to  
10 somebody's attention?  
11 A. So you're asking if there was a specific  
12 list that I know of?  
13 Q. Sure.  
14 A. Not that I know of that I was able to  
15 find.  
16 Q. Are you aware of -- let me back up and  
17 ask you this: Who did you talk to within HBC or  
18 Giant Eagle to find out about this policy that was  
19 in place from 2009 through July 2014?  
20 A. The policy or the system? I'm sorry.  
21 Q. Sorry. You're right. There's not a  
22 policy. The system.  
23 A. So in the investigative piece, the  
24 diligence, Walter was one of the folks that was  
25 discussed about what happened during this

Page 102

1 timeframe. Also, folks from corporate, from our  
 2 operations folks, pharmacy operations as well as  
 3 the warehouse operations.  
 4 Q. Let me stop you for a second. Walter,  
 5 is he still with the company?  
 6 A. Yes.  
 7 Q. And what's he do now?  
 8 A. His exact duties I don't know, but it's  
 9 something in distribution.  
 10 Q. And did you personally speak with him?  
 11 A. I did not.  
 12 Q. How did you go about obtaining his  
 13 knowledge base to talk about his role in the  
 14 suspicious order system?  
 15 A. I reviewed his written conversations  
 16 with our attorneys and other folks within our  
 17 company.  
 18 Q. You mentioned Mr. Durr. You said you  
 19 talked to some folks from corporate to find out  
 20 about what was going on from '09 to 2014. Who did  
 21 you talk to from corporate?  
 22 A. Greg Carlson, which is one of our  
 23 operations folks. Also had responsibility for  
 24 procurement at the time.  
 25 Q. So he was a procurement guy between --

Page 103

1 A. Operations and procurement, yes.  
 2 Q. And he did that -- he served in that  
 3 role between '09 and '14?  
 4 A. The exact times I'm not sure, but  
 5 somewhere in there.  
 6 Q. Somewhere in there?  
 7 A. Yes.  
 8 Q. Who else other than Greg Carlson?  
 9 A. That was it.  
 10 Q. Was Walter able to tell you and through  
 11 the notes that you reviewed -- let me back up.  
 12 Did you specifically talk with Greg?  
 13 A. I did not.  
 14 Q. Same thing there where you just reviewed  
 15 some notes?  
 16 A. Yes.  
 17 Q. Through these notes that you happened to  
 18 review from Walter and from Greg when you were  
 19 doing your diligence I think you said earlier to  
 20 prepare to testify here today, did they talk to  
 21 you about any training that they attended about  
 22 suspicious order monitoring and different red  
 23 flags to be on the lookout for?  
 24 A. They didn't specifically read anything  
 25 on training, but certainly through the documents

Page 104

1 that were presented, they were aware of the drugs  
 2 and the things that they should look for.  
 3 Q. You agree that the regulation says that  
 4 HBC must design and operate a system; correct?  
 5 A. Yes.  
 6 Q. What is that system?  
 7 A. Sure. As I mentioned earlier, it's an  
 8 integrated system between operations, the  
 9 warehouse and our pharmacies.  
 10 Q. Is there anything else you can tell me  
 11 about this system other than what you just said?  
 12 A. As far as what specific -- can you be a  
 13 little more -- as far as the system, it's an  
 14 integrated approach between -- for us, we're a  
 15 self distributing -- we're a self distributing  
 16 distributor. So we own the stores. We own the  
 17 warehouse. We own everything in between.  
 18 We're very different than a McKesson or a  
 19 Cardinal or a traditional distributor. We have  
 20 line of sight from the time products are delivered  
 21 to our warehouse all the way to when they're  
 22 dispensed to customers, patients.  
 23 Q. What I'm hearing from you is that your  
 24 system was the superintendent, the pickers and the  
 25 procurement folks knew what to look for --

Page 105

1 A. As well as the stores. As well as the  
 2 stores.  
 3 Q. Let me finish. What I'm hearing from  
 4 you is that your system, HBC's system that was  
 5 mandated by these federal regulations was that the  
 6 distribution center superintendent, the pickers in  
 7 the distribution center, the corporate procurement  
 8 officers and the pharmacies knew what to look for  
 9 and looked for it?  
 10 MR. BARNES: Object to the form of the  
 11 question.  
 12 BY MR. GADDY:  
 13 Q. Is that your answer as to what HBC's  
 14 system was from 2009 to 2014?  
 15 MR. BARNES: Same objection.  
 16 THE WITNESS: I'm telling you it was an  
 17 integrated systems where the stores were filling  
 18 legitimate prescriptions which created demand to  
 19 our warehouse that was fulfilled to those stores.  
 20 BY MR. GADDY:  
 21 Q. If I'm being unclear -- I'm trying to  
 22 make sure I'm understanding your answer. As far  
 23 as the order -- excuse me -- as far as the system  
 24 to detect any suspicious orders that come from the  
 25 stores, what I'm hearing you say is that the



Page 106

1 system was that the superintendent, the pickers,  
2 the procurement folks who would be the only ones  
3 with HBC, right, that we just talked about?  
4 A. HBC specific, yes.  
5 Q. So the pickers, the superintendent and  
6 the procurement folks knew what to look for and  
7 looked for it. Is that the system that HBC  
8 operated to detect suspicious orders?  
9 A. The system also included the frontline  
10 scrutiny and professional judgment of the  
11 pharmacist filling prescriptions as well together  
12 as one whole system, yes.  
13 Q. But otherwise, that's the system?  
14 A. That's the system. And then over time,  
15 the system was continually improved upon which  
16 later added the thresholds and some IT  
17 enhancements, et cetera, yes.  
18 Q. But when the first hydrocodone pills  
19 started rolling out the door in 2009, the system  
20 was that the superintendents, the pickers and the  
21 procurement officers knew what to look for and  
22 looked for it?  
23 MR. BARNES: I'm going to object. You  
24 keep misstating what he said in his prior answer.  
25 MR. GADDY: Bob, if you want to object,

Page 107

1 you can object.  
2 MR. BARNES: I am.  
3 MR. GADDY: Well, limit it to that you  
4 don't get to put words --  
5 MR. BARNES: Be fair with your question.  
6 He told you about an integrated system about five  
7 times now, and every time you ask him another  
8 question, you leave out a piece of it.  
9 BY MR. GADDY:  
10 Q. You can answer the question.  
11 A. As I stated, the system was an  
12 integrated system. Again, we're in a unique  
13 situation. We're distributing to our own stores.  
14 We know our stores. We know they're -- we have  
15 line of sight on every prescription that comes  
16 through our doors that we fill, and we fulfill  
17 orders to those stores.  
18 And we have chain of custody of product all  
19 the way from the warehouse to our stores,  
20 ultimately to the patients. So what I'm telling  
21 you is our system was integrated between store  
22 controls, warehouse controls and corporate  
23 controls.  
24 Q. You agree that the duties and  
25 regulations that apply to the stores, the

Page 108

1 pharmacies, are different than the regulations and  
2 duties that apply to the distributor; correct?  
3 MR. BARNES: Object to form.  
4 THE WITNESS: They have different  
5 duties, but they have a duty as well to have the  
6 safety and security of controlled substances as  
7 does our warehouse.  
8 BY MR. GADDY:  
9 Q. Sure, but pharmacies -- do pharmacies  
10 have a duty to detect suspicious orders?  
11 A. By definition, pharmacists' duty are to  
12 fill legitimate prescriptions from legitimate  
13 prescribers which would then necessitate orders  
14 that are fulfilled from our warehouse.  
15 Q. You keep using the word "integrated."  
16 Tell me what you mean by that.  
17 A. It's an integrated system that if you  
18 think about it again, the stores are doing their  
19 due diligence, making sure they're filling  
20 legitimate prescriptions for legitimate needs,  
21 right, that generate orders to our warehouse, and  
22 we fulfill those orders.  
23 So again, we have folks from the warehouse  
24 monitoring and having controls, physical controls  
25 as well as the controls we discussed. You have

Page 109

1 the folks on the procurement side with their  
2 controls and the pieces that they're buying into  
3 the warehouse and selling out of the warehouse, as  
4 well as the folks in the store. So that is the  
5 system.  
6 Q. Did HBC provide any training to Mr. Durr  
7 or the pickers that worked underneath him as far  
8 as HBC's obligations under the Controlled  
9 Substance Act?  
10 A. That I don't know.  
11 Q. Did HBC provide any training or  
12 education to the procurement officers with  
13 corporate I think you referred to it as on HBC's  
14 obligations under the Controlled Substance Act?  
15 A. I don't know.  
16 Q. Do you know whether or not there was any  
17 list -- you keep kind of saying that these  
18 different people in these different roles knew  
19 what to look out for.  
20 Was there any list of those things that they  
21 should be looking out for?  
22 A. There's no list that I could find, but I  
23 think you established early on in the testimony  
24 that these drugs were commonly known as drugs of  
25 interest and certainly drugs that we needed to



<p style="text-align: right;">Page 110</p> <p>1 keep an eye on.</p> <p>2 Q. From the education that you did to</p> <p>3 prepare to testify here today, do you know of</p> <p>4 anything that Mr. Durr or Mr. Carlson or any of</p> <p>5 these pickers, do you know anything that they were</p> <p>6 looking for, any datapoints that they were looking</p> <p>7 at between '09 and 2014 to determine whether or</p> <p>8 not an order was suspicious?</p> <p>9 A. I didn't find any specific written</p> <p>10 documents of what they were looking for or not</p> <p>11 looking for.</p> <p>12 Q. Do you have any idea of what they would</p> <p>13 have been looking for?</p> <p>14 A. They would have been looking for any</p> <p>15 patterns that deviated from the norm. Certainly</p> <p>16 again, as I mentioned, we know our stores. We're</p> <p>17 selling product to our stores pursuant to</p> <p>18 legitimate prescriptions. And they'd be looking</p> <p>19 for anything that's out of the norm.</p> <p>20 Q. How do you know that they were looking</p> <p>21 for anything out of the norm. How do you have</p> <p>22 that knowledge?</p> <p>23 A. Because as part of the diligence,</p> <p>24 looking at their responses and what they had</p> <p>25 discussed, that was clearly ascertained from the</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. What information, reports, data is</p> <p>2 available to those pickers to allow them to</p> <p>3 identify patterns that deviate from the norm?</p> <p>4 A. I did not find any particular reports or</p> <p>5 any specific things that they were looking for.</p> <p>6 Q. With Mr. Durr, the superintendent, can</p> <p>7 you kind of generally describe for me what his job</p> <p>8 duties were on a daily basis?</p> <p>9 A. His responsibilities would be the</p> <p>10 security and controls of running our pharmacy</p> <p>11 warehouse.</p> <p>12 Q. And that pharmacy warehouse included not</p> <p>13 only the Schedule III hydrocodone combination</p> <p>14 products that we've been talking about today, but</p> <p>15 it also included a variety of other prescription</p> <p>16 medication; correct?</p> <p>17 A. Nonscheduled, is that what you're</p> <p>18 asking?</p> <p>19 Q. Sure.</p> <p>20 A. Yes.</p> <p>21 Q. It also included Schedule IVs and</p> <p>22 Schedule Vs; correct?</p> <p>23 A. Correct.</p> <p>24 Q. It included Schedule IIIs that are not</p> <p>25 hydrocodone combination products; correct?</p>
<p style="text-align: right;">Page 111</p> <p>1 conversation.</p> <p>2 Q. So you understand that what Mr. Durr,</p> <p>3 the pickers and the folks in corporate were</p> <p>4 looking for was any orders or any patterns that</p> <p>5 deviated from the norm?</p> <p>6 A. That were suspicious, that looked</p> <p>7 suspicious, yes.</p> <p>8 Q. Anything else?</p> <p>9 A. From what I can delineate and see, they</p> <p>10 were looking for those things, yes.</p> <p>11 Q. What information -- let me back up. I'm</p> <p>12 going to ask you some questions about the pickers</p> <p>13 in particular.</p> <p>14 Is their sole job function to receive orders</p> <p>15 and pick the orders and fill the totes and load</p> <p>16 the trucks? Is that their sole -- is that their</p> <p>17 primary function?</p> <p>18 A. Primary functions, yes.</p> <p>19 Q. And would it be fair to say that they</p> <p>20 spend most of their day in a warehouse receiving</p> <p>21 orders, locating product, putting it into a tote</p> <p>22 and facilitating it getting on a truck so it can</p> <p>23 go a store?</p> <p>24 A. And maintaining the security of that</p> <p>25 product along the way, yes.</p>	<p style="text-align: right;">Page 113</p> <p>1 A. Yes.</p> <p>2 Q. It also included I think, as you just</p> <p>3 said, noncontrolled substances such as blood</p> <p>4 pressure medicine, acne medication, birth control.</p> <p>5 All those types of things would be included;</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. And all those things are under the</p> <p>9 purview of Mr. Durr; correct?</p> <p>10 A. Yes.</p> <p>11 Q. Are you aware of any data, reports or</p> <p>12 information that Mr. Durr had available to him to</p> <p>13 assist him in identifying any patterns of Schedule</p> <p>14 III drug orders, specifically HCPs, that would</p> <p>15 have deviated from the norm?</p> <p>16 A. Through this process I did not find</p> <p>17 any -- you keep asking me reports. I did not find</p> <p>18 any reports that he'd be looking at. But, again,</p> <p>19 as part of this integrated process, he would be</p> <p>20 working with our operations folks. The operation</p> <p>21 folks oversee the stores. So it's a closed</p> <p>22 system. So there's a negative feedback loop</p> <p>23 within that system.</p> <p>24 Q. And I'm not trying to ask a question</p> <p>25 that I already know the answer to. I'm just</p>

Page 114

1 trying to be inclusive when I say data, report  
2 information --  
3 A. Sure. And I'm trying to do my best to  
4 answer what it is you're looking for.  
5 Q. I understand. But I didn't want you to  
6 get focused on the word reports. You're not aware  
7 of any information, data that Mr. Durr had  
8 available to him to assist him with identifying  
9 patterns that deviated from the norm?  
10 A. What I'm saying is I don't have -- other  
11 than written documents, I don't have -- I'm not  
12 privy to the conversations and the pieces and the  
13 things that he did as part of running his  
14 warehouse.  
15 Q. When you got information from Mr. Durr,  
16 he didn't say, I had this report to review or I  
17 had this dataset that I got sent to me on a  
18 regular basis. He didn't say anything like that?  
19 A. I didn't read any of that, no.  
20 Q. I'm going to ask you the same questions  
21 as it relates to Mr. Carlson and the other folks  
22 that would have been in procurement.  
23 Are you aware of any data, information,  
24 reports that they had available to them to assist  
25 them in identifying any patterns of HCPs ordering

Page 115

1 that would have deviated from the norm?  
2 A. Certainly the folks in corporate would  
3 have information on what's being purchased by our  
4 stores and certainly feedback from the operations  
5 team that oversee these stores. But through this  
6 process, I didn't have any specific reports or  
7 documented -- I go back to reports because we're  
8 not privy to the conversations and to how they did  
9 their job or didn't do their job on a day-to-day  
10 basis from what I could read.  
11 Q. I understand. What I hear you to be  
12 saying is the information you got from  
13 Mr. Carlson, who was one of the procurement folks  
14 during this timeframe, was that he didn't inform  
15 you of any data, reports or information that he  
16 was provided on a regular basis for him to review  
17 orders to see whether or not there was a pattern  
18 that deviated from the norm?  
19 MR. BARNES: You mean other than what  
20 he's testified to?  
21 MR. GADDY: I asked the question.  
22 MR. BARNES: Object to form. Asked and  
23 answered.  
24 THE WITNESS: What I'm saying is through  
25 what I reviewed from Mr. Carlson, I couldn't

Page 116

1 ascertain what he used or didn't use to do this  
2 job.  
3 BY MR. GADDY:  
4 Q. There was no paper identified, no  
5 report, no Excel spreadsheet, nothing like that  
6 that was identified by Mr. Carlson, Mr. Durr or  
7 any information you received from the pickers, no  
8 documents that were identified that were reviewed  
9 to assist with this process; correct?  
10 A. Specifically, again, our system  
11 continued to be improved and changed over time.  
12 And there were certainly procedures that were  
13 buttressed and improved over time. But certainly  
14 through what I read, there was nothing on a report  
15 or, to your point, Excel spreadsheet that I did  
16 glean. It doesn't mean there wasn't any. It  
17 wasn't in what I had read.  
18 Q. You spent 40 to 50 hours preparing for  
19 today; correct?  
20 A. Yes, sir.  
21 Q. You made every effort to get all the  
22 information you could; correct?  
23 A. Yes.  
24 Q. You mentioned that the system had  
25 improvements over time.

Page 117

1 A. Yes.  
2 Q. I think you said that at some point in  
3 time, there was a threshold program implemented?  
4 A. Yes.  
5 Q. When did HBC first start utilizing a  
6 threshold program?  
7 A. A threshold program with some IT  
8 enhancements were put into place roughly in 2013.  
9 Q. Do you know what month in 2013 or season  
10 even?  
11 A. I don't recall exactly in 2013.  
12 Q. And were thresholds set for every  
13 prescription drug or just controlled substances?  
14 A. Controlled substances.  
15 Q. And that included Schedule III  
16 controlled substances?  
17 A. Yes.  
18 Q. How were thresholds established? Let me  
19 back up before you answer that. I'm making an  
20 assumption that threshold is a monthly ordering  
21 threshold. Am I wrong on that?  
22 A. So the threshold established was using  
23 diligence that was ascertained at the time from  
24 DEA that a 3X threshold to be established, a  
25 monthly threshold, to your point, using 12 months

Page 118

1 of trailing data, 3X the average for that month.  
 2 Q. Let me say it back to you to make sure I  
 3 understand it. This threshold program which was  
 4 first begun in 2013 set a threshold at 3 times the  
 5 average amount of that substance that was  
 6 distributed over the last 12 months?  
 7 A. So 3X the company average for that  
 8 chemical. So it was at the GPI level. So the  
 9 chemical would include all the drugs having that  
 10 chemical in it, 3X using 12 months of trailing  
 11 data, 3X the company average for that chemical,  
 12 that product.  
 13 Q. So you explained two things there.  
 14 First of all, it was based on the chemical?  
 15 A. GPI level, yes.  
 16 Q. Does that mean that Lortab and Vicodin  
 17 don't get different thresholds. They're all under  
 18 the same threshold?  
 19 A. It's all lumped together as one  
 20 threshold.  
 21 Q. Because that's the same combination of  
 22 hydrocodone and acetaminophen?  
 23 A. It's looking at the active ingredient,  
 24 yes.  
 25 Q. As far as how the threshold is set, if

Page 119

1 HBC had sold a hundred HCP products over a month  
 2 for the last 12 months, the threshold for the next  
 3 month would have been 300; is that fair?  
 4 A. Well, the threshold was -- yes. Let me  
 5 just play that back. So it would be 3X again at  
 6 the GPI level of that GPI using the 12 months  
 7 worth of data, yes.  
 8 Q. So months 1 through 12 Giant Eagle  
 9 pharmacies had ordered 100 hydrocodone combination  
 10 products?  
 11 A. All included.  
 12 Q. Correct. Then in month 13 the threshold  
 13 would be 300?  
 14 A. Well, it uses the average of the 12  
 15 months of data. When the new month comes on, the  
 16 furthest out drops off. It's a rolling 12 months  
 17 worth of data, yes.  
 18 Q. But I have that math right, in month 13,  
 19 the threshold would be 300 because the prior 12  
 20 months, the average was 100?  
 21 A. But again, it uses the last 12 months.  
 22 So assuming that it was a hundred all those  
 23 months, it would be 3X which would be 300, yes.  
 24 Q. You said it was a rolling system. So at  
 25 the 13th month, instead of HBC distributing a

Page 120

1 hundred HCPs and it distributed 200, the threshold  
 2 for the 14th month would be different. It would  
 3 not be the same 300 because that last month would  
 4 have affected the average; correct?  
 5 A. Each datapoint adds to the average. And  
 6 certainly the reason for that is there's  
 7 seasonality in our business as well where products  
 8 change over time, yes. The demand for products  
 9 change over time.  
 10 Q. When you say seasonality, do you mean  
 11 different times of years or do you mean --  
 12 A. Yes. Different times of year, cough and  
 13 cold season versus summer months, yes.  
 14 Q. Is there a hydrocodone combination  
 15 product season?  
 16 A. Well, certainly hydrocodone products in  
 17 cough syrups, it is more prevalent during cough  
 18 and cold season than it is during summer months.  
 19 Q. I think I heard you mention that HBC  
 20 received guidance from the DEA that a 3 times  
 21 average was an appropriate threshold.  
 22 A. What I said is during the due diligence  
 23 to set the threshold, information was derived from  
 24 the DEA published websites on a 3X threshold that  
 25 they used for list chemicals, and that's where our

Page 121

1 3X number was derived from.  
 2 Q. You're talking about the chemical  
 3 handler's manual?  
 4 A. From what I -- to prepare for this, it  
 5 was based on written DEA inference on a website or  
 6 a manual, I'm not sure where it was derived from,  
 7 but the DEA itself was establishing a 3X  
 8 threshold, and the team adopted that rationale.  
 9 Q. Are you testifying that the DEA had  
 10 suggested a 3X threshold for opioids?  
 11 A. I'm testifying that the HBC warehouse  
 12 and the team involved found data that pointed to a  
 13 3X threshold tier, and that's what they adopted.  
 14 Q. But for opioids. That's my question.  
 15 Are you testifying that HBC had information from  
 16 the DEA that they were approving or ratifying or  
 17 blessing, whatever verb you want to use, a 3X  
 18 threshold in 2013 for opioids?  
 19 A. No. That is not what I'm saying.  
 20 Q. Then help me understand.  
 21 A. What I'm saying is in the diligence to  
 22 set the threshold, Giant Eagle inferred from  
 23 information that they gleaned from the website, a  
 24 manual, whatever it was, that established a 3X  
 25 threshold is where they want -- the DEA was -- the

<p style="text-align: right;">Page 122</p> <p>1 DEA over the years has not been clear about what          2 their expectations were of any threshold.          3 So it left each registrant to set whatever          4 parameters and controls that they deemed          5 appropriate. So our team used whatever they could          6 find that was reasonably available and reasonable          7 to set our thresholds.          8 Q. The DEA never told HBC that a three          9 times average was appropriate; correct?          10 A. Directly, no, never.          11 Q. Did DEA indirectly tell HBC that a three          12 times average was appropriate?          13 A. What I'm saying is the HBC set its          14 threshold based on information that it gleaned          15 from a DEA -- just like you showed me earlier, a          16 page from the DEA website. There was information          17 that they used from DEA and inferred to use a 3X          18 threshold.          19 HBC set the threshold, but it wasn't just          20 some arbitrary number they picked. There was          21 information they used to get to a 3X threshold.          22 Q. I'll show you what I'll mark as No. 13.          23 (HBC-Tsipakis Exhibit 13 was marked.)          24 BY MR. GADDY:          25 Q. I'm showing you a June 2, 2012 letter</p>	<p style="text-align: right;">Page 124</p> <p>1 would assume that we wouldn't have gotten that          2 since we weren't a registrant, and this states          3 that it went to the registrants.          4 The only one, and I don't know if we did or          5 did not receive it, would have been this one from          6 2012.          7 BY MR. GADDY:          8 Q. This one in 2012 was before HBC          9 instituted its threshold policy at three times          10 average; correct?          11 A. Yes.          12 Q. And it says -- in the first line, it          13 says, "This letter is being sent to every entity          14 in the United States who is registered with the          15 Drug Enforcement Administration to manufacture or          16 distribute controlled substances."          17 Do you see that?          18 A. Yes.          19 Q. In June 2012, was HBC such a registrant?          20 A. Yes.          21 Q. "This letter is to remind controlled          22 substance manufacturers and distributors of their          23 responsibilities to inform the DEA of suspicious          24 orders in accordance with 21 CFR 1301.748."          25 Do you see that?</p>
<p style="text-align: right;">Page 123</p> <p>1 from Joe Rannazzisi with the DEA. Do you see          2 that?          3 A. Yes.          4 Q. Have you ever seen this before?          5 A. Yes.          6 Q. Did you have the opportunity to review          7 this document in preparing for your deposition          8 today?          9 A. Not all of it.          10 Q. I'll represent to you and you can flip          11 through it and we'll look through some of this,          12 but it's a 2012 letter, and attached to that          13 letter were earlier letters, two from 2007 and one          14 from 2006.          15 Do you see that?          16 A. Yes.          17 Q. And are you aware that HBC received this          18 letter?          19 MR. BARNES: Just the one on top or all          20 of them?          21 MR. GADDY: The one at the top with the          22 attachments.          23 THE WITNESS: I'm not aware of whether          24 HBC received these letters or not. As a matter of          25 common sense, we weren't registered in 2007. So I</p>	<p style="text-align: right;">Page 125</p> <p>1 A. Yes.          2 Q. In the very next paragraph, it says, "On          3 September 27, 2006, DEA sent a letter to its          4 registrant community expressing concerns regarding          5 drug abuse in the United States and highlighting          6 the responsibility of manufacturers and          7 distributors to be vigilant in the distribution of          8 controlled substances."          9 Do you see that?          10 A. Yes.          11 Q. Did HBC ever seek to obtain that 2006          12 letter from DEA?          13 A. I don't know.          14 Q. They were certainly informed about it;          15 correct?          16 A. Again, I'm not sure if they did or did          17 not receive this June 2012 letter. So I don't          18 know.          19 Q. Well, it says it was sent to every          20 entity who was registered with the DEA.          21 And you agreed to distribute controlled          22 substances, and you agree that HBC was registered          23 with the DEA to distribute controlled substances          24 in June 2012; correct?          25 A. Correct.</p>

<p style="text-align: right;">Page 126</p> <p>1 Q. Do you know whether or not HBC ever          2 tried to obtain or did obtain the September 2006          3 DEA letter?          4 A. I do not.          5 Q. But you see that if they received this          6 letter, as it's indicated that they would have,          7 they would have been aware of that letter;          8 correct?          9 MR. BARNES: Object to the form.          10 THE WITNESS: If you're asking me a          11 hypothetical if they received this letter in '12,          12 would they be aware of a letter from '06 to '07,          13 yes.          14 BY MR. GADDY:          15 Q. Did HBC ever request and review any of          16 those letters that you're aware of?          17 A. I don't know.          18 Q. If you read down further in that          19 paragraph, there's a sentence that starts,          20 "Although DEA's September 2006 letter..."          21 Do you see that? It's about halfway down the          22 paragraph.          23 A. Yes. I see it now.          24 Q. It says, "Although DEA's September 2006          25 letter included a list of factors that might</p>	<p style="text-align: right;">Page 128</p> <p>1 the registrant to design and operate the system."          2 Do you see that?          3 A. Yes.          4 Q. And was HBC aware of that obligation          5 going back to 2009 when they first started          6 distributing hydrocodone combination products?          7 A. Yes.          8 Q. If you go down to the bottom paragraph,          9 do you see where it says, "Registrants who rely on          10 rigid formulas to identify whether an order          11 suspicious may fail to detect suspicious orders."          12 Do you see that?          13 A. Yes.          14 Q. It says, "For example, this system might          15 not identify suspicious orders being placed by a          16 pharmacy if that pharmacy placed unusually large          17 orders from the beginning of its relationship with          18 the supplier."          19 Do you see that?          20 A. Yes.          21 Q. Would you agree with me that HBC's          22 threshold program that was instituted in 2013 was          23 a rigid formula?          24 A. No, I do not.          25 Q. Why not?</p>
<p style="text-align: right;">Page 127</p> <p>1 indicate diversion, DEA wants to stress this was          2 not a comprehensive list of all possible          3 indications of diversion. DEA encourages the          4 registrant to take an integrated approach. This          5 point was emphasized in the December 2007 letter,          6 and DEA is once again bringing it to your          7 attention."          8 Do you see that?          9 A. Yes.          10 Q. It goes on in the next paragraph to talk          11 about the code and the regulation that we looked          12 at earlier today. It says, "Under federal law,          13 all manufacturers and distributors are required to          14 maintain effective controls against diversion."          15 Do you see that?          16 A. Yes.          17 Q. It says, "The DEA regulations require          18 all manufacturers and distributors to report          19 suspicious orders of controlled substances."          20 Do you see that?          21 A. Yes.          22 Q. It says, "The registrant shall design          23 and operate a system to disclose to the registrant          24 suspicious orders of controlled substances. This          25 regulation clearly places the responsibility on</p>	<p style="text-align: right;">Page 129</p> <p>1 A. Because in our situation, as I testified          2 earlier, we have line of sight on our stores,          3 warehouse, everything involved. So this is one          4 component.          5 The threshold formula was one component of a          6 total system to identify and detect suspicious          7 orders.          8 Q. The other components of those systems          9 were superintendent of the warehouse, the pickers          10 and the procurement individuals knowing what to          11 look for as it relates to patterns that deviate          12 from the norm?          13 MR. BARNES: Object to form.          14 Go ahead.          15 THE WITNESS: As well as the stores. So          16 if you follow -- if the stores are filling          17 prescriptions, legitimate prescriptions pursuant          18 to valid prescriptions, they generate demand for          19 those prescriptions to our warehouse that fulfills          20 them.          21 So in our closed system, we wouldn't expect          22 suspicious orders because they're pursuant to          23 legitimate valid prescriptions.          24 BY MR. GADDY:          25 Q. So let me get back to the threshold</p>



Page 130

1 report. Those are established sometime in 2013;  
2 correct?  
3 A. Correct.  
4 Q. How often would a report kind of  
5 updating HBC on those thresholds be generated?  
6 A. So a report would generate daily. That  
7 would be reviewed daily.  
8 Q. So the first of the month would be the  
9 first report for that month; correct?  
10 A. Yes.  
11 Q. And on the first of the month, describe  
12 for me what that report is going to look at. Is  
13 it going to be a list of every pharmacy and every  
14 controlled drug and how many orders have been  
15 made, or is it only going to identify orders that  
16 are approaching or over the threshold?  
17 A. The daily report would identify orders  
18 of interest that we would like to investigate  
19 further.  
20 Q. Was the threshold based on dosage units  
21 or MME or something else?  
22 A. The threshold was based on the GPI level  
23 of -- the exact parameters of the formula and how  
24 the threshold worked. I know it relies on  
25 threshold of the 3X that we established and using

Page 131

1 the GPI portion of the drug.  
2 As far as MME, dosage units, by using GPI --  
3 it's the amount of the chemical in question that  
4 it's tracking. The exact way it works and flags,  
5 I don't have the intricacies of that.  
6 Q. So you said that the threshold report  
7 would identify I think what you called orders of  
8 interest; correct?  
9 A. Correct.  
10 Q. Is there any written policy and  
11 procedure anywhere at any time that Giant Eagle  
12 has or had, HBC has or had that uses the term  
13 order of interest?  
14 A. Can you define at any time? What's the  
15 timeframe that you're describing?  
16 Q. From 2006 until today.  
17 A. Do we have a document or a report; is  
18 that right?  
19 Q. Do you have a document, a policy, a  
20 procedure of anything that uses the term order of  
21 interest?  
22 A. So I'm trying to -- I don't know.  
23 Q. I'll represent to you that 90 seconds  
24 ago was the first time I've heard the phrase order  
25 of interest as it relates to HBC. I want to make

Page 132

1 sure I'm not missing a policy or a procedure or a  
2 definition page or an appendix that would tell me  
3 what order of interest means to HBC or Giant  
4 Eagle. Am I or am I not missing something?  
5 A. No. You're not missing. There's  
6 reports and things that the misnomer of things  
7 that are classified as suspicious. Our orders are  
8 not classified as suspicious until after an  
9 investigation happens.  
10 So certainly our reports in its infancy when  
11 they were created mention suspicious report,  
12 suspicious order. That's not what it means that  
13 those reports -- the fact that something shows up  
14 on that report does not mean it's suspicious until  
15 we've cleared it or not. And if not, we would  
16 report it.  
17 Q. When did that phrase orders of interest  
18 come about within HBC or Giant Eagle?  
19 A. I think looking at things through the  
20 2018 lens versus things that happened in the past,  
21 at some point along the way, there was an  
22 inference of the way these reports were labeled or  
23 even internal communications were labeled were not  
24 what they intended.  
25 So our team started using orders of interest

Page 133

1 later. The exact time I can't tell you.  
2 Q. That would be more recent?  
3 A. More recent, yes.  
4 Q. So what you had was you had documents  
5 and memos and reports that discuss suspicious  
6 orders. And more recently you have changed that  
7 terminology to orders of interest; is that  
8 accurate?  
9 A. What I'm saying is there's things  
10 labeled as suspicious orders, but it's really  
11 meant and intended for orders of interest.  
12 Q. So what you used to call suspicious  
13 orders you now call orders of interest?  
14 A. I'd have to see the specific  
15 circumstance on what document and what piece, but  
16 certainly on the reports, I can tell you there's  
17 reports that say suspicious order report. The  
18 mere fact that a store or a product is on that  
19 report does not mean it's suspicious. It's  
20 intended that's something for us to investigate  
21 and look at and then either clear or report.  
22 That's the designation I'm trying to  
23 testify -- to put in my testimony. Did I answer  
24 your question?  
25 Q. I think you did. What I was getting at

Page 134

1 is what you previously called suspicious order  
2 reports, you would now change that terminology and  
3 call them order of interest reports. That's what  
4 you would do them now?  
5 A. If I could go back and redo them all,  
6 yes, for no other reason other than they don't  
7 designate what the intended purpose was.  
8 Q. It would accurate to say that -- let me  
9 back up. Let's get back to these threshold  
10 reports.  
11 You said that they're generated daily. When  
12 they're generated, do they contain information for  
13 any Giant Eagle pharmacy?  
14 A. All pharmacies, yes.  
15 Q. And if it's the first day of the month  
16 and either no orders have been placed yet or no  
17 orders that have triggered a threshold, have gone  
18 above the threshold have yet been placed on the  
19 first day of the month, would there still be a  
20 report generate that says nothing, or would there  
21 be no report at all?  
22 A. My understanding, the report would  
23 flag -- it runs every day, but whether it's a null  
24 report or whether it lists -- I don't -- I don't  
25 recall. But it definitely runs every day and any

Page 135

1 store that day would hit threshold or flag as an  
2 order that we needed to investigate would show up,  
3 yes.  
4 Q. And any order that showed up on that  
5 list exceeded the three-month average for the  
6 prior year?  
7 A. The three-month chain average, yes.  
8 Q. Was the threshold set store by store, or  
9 was it chain-wide?  
10 A. Initially it was set as the chain  
11 average, and then later on it was improved on, per  
12 store improved just based on continuing -- through  
13 this process we continued to look at better ways  
14 of looking at things, et cetera. It was improved  
15 to look at each store's individual -- store by  
16 store.  
17 Q. When did that change happen?  
18 A. 2017.  
19 Q. So from 2013 through 2017, it was a  
20 chain-wide Giant Eagle-wide threshold average?  
21 A. Looking at our stores in totality as a  
22 chain and then applying that threshold, the chain  
23 average, to each location, yes.  
24 Q. So whether the Giant Eagle location was  
25 in downtown Cleveland or a more rural location in

Page 136

1 Summit County, those two pharmacies would have the  
2 exact same threshold for a particular product?  
3 A. Yes. And as I mentioned, the threshold  
4 was one component of the total system that we  
5 used, but yes.  
6 Q. Were these orders that showed up on the  
7 threshold report, did they show up before or after  
8 the order had been shipped to the pharmacy?  
9 A. It would have been -- I believe it would  
10 have been either in process of shipping or having  
11 been shipped.  
12 Q. The order wasn't blocked, it wasn't  
13 stopped; correct?  
14 A. The order wasn't blocked. However, in  
15 our unique circumstance, the orders are going to  
16 our own stores. If there's a reason for us to  
17 intercept that order, quarantine that order, send  
18 in loss prevention to pick up that order, we have  
19 the ability to do that where a traditional  
20 wholesaler does not.  
21 Q. You keep talking about how you  
22 distribute to your own stores and saying that  
23 that's it makes unique. You've said that several  
24 times now; right?  
25 A. My testimony is not that we have any

Page 137

1 different obligations under the law. What I'm  
2 saying is we have different things at our disposal  
3 that other traditional wholesalers do not.  
4 Q. Well, you understand that a store like  
5 Walgreens has a distribution facility that  
6 distributes to itself?  
7 A. Sure.  
8 Q. CVS has a distribution facility that  
9 distributes to itself?  
10 A. Yes.  
11 Q. Rite-Aid has a distribution facility  
12 that distributes to itself?  
13 A. Yes.  
14 Q. Discount Drug Mart has a distribution  
15 center that distributes to itself?  
16 A. Yes.  
17 Q. This is not a rare unique feature that's  
18 unique to HBC or Giant Eagle, is it?  
19 A. That's your opinion. To us that's a  
20 difference than -- I guess I don't understand your  
21 question.  
22 Q. I guess my point is just because you  
23 distribute to your own pharmacies doesn't mean  
24 you're not obligated to abide by the federal laws  
25 and regulations that all wholesale distributors

Page 138

1 are subject to; correct?

2 A. I never said that we operated nor

3 followed the law any differently with our

4 responsibilities.

5 Q. I'm on No. 14. I'm going to show you

6 HBC 1032 which we're going to mark as Exhibit

7 No. 14 for today's deposition.

8 Is this an example of one of the threshold

9 reports that we've been talking about?

10 (HBC-Tsipakis Exhibit 14 was marked.)

11 THE WITNESS: In this format, I'm having

12 trouble figuring out what this is.

13 BY MR. GADDY:

14 Q. I'm giving it to you how it was given to

15 me. I was hoping you could kind of explain some

16 of it to me.

17 Do you recognize this as being one of the

18 threshold reports that we've been talking about?

19 A. I'm having difficulty. I'm trying to

20 understand what I'm looking at.

21 Q. Let's see if we can walk through it a

22 little bit. It looks like it was maybe a

23 spreadsheet. It looks like the left-hand column

24 is the pharmacy number?

25 A. Yes.

Page 139

1 Q. Those numbers going down underneath

2 there, do those correspond with different Giant

3 Eagle stores?

4 A. It appears so, yes.

5 Q. I want to skip the vendor for a minute.

6 But the next one indicates month key, and it looks

7 like October of 2016 is the date of this report?

8 A. Yes.

9 Q. I couldn't see any way from this report

10 to determine when in October this report was run,

11 whether it was run on the 1st or the 15th or the

12 31st. Do you know if there's a way to determine

13 that?

14 A. Based on what I'm looking at, I agree.

15 I can't tell.

16 Q. The next column says, I guess, it's GPI

17 10?

18 A. Yes.

19 Q. Can you explain what that is?

20 A. Sure. The GPI is the GPI class of the

21 drug. I don't know which GPI -- this one, based

22 on what I'm reading here, I'm assuming this is

23 oxycodone, the GPI 10 for oxycodone.

24 Q. And you were just talking about the top

25 one on the list?

Page 140

1 A. Yes.

2 Q. And the next one says it looks like the

3 Total Shipped Quantity. Do you see that?

4 A. Yes.

5 Q. And it lists the total shipped quantity

6 as 4500. And the next column says Threshold

7 Quantity. Do you see that?

8 A. Yes.

9 Q. And the threshold was 4200, so less than

10 the 4500; correct?

11 A. From what I'm reading, yes.

12 Q. And then at the next column, it has the

13 Product Name?

14 A. Yes.

15 Q. And then, finally, the column on the

16 right is the Schedule Number, and oxycodone

17 obviously is a Schedule II drug; correct?

18 A. Yes.

19 Q. Are you expecting there to be any

20 additional information on one of these threshold

21 reports?

22 A. Again, I haven't seen this in this

23 format. I'm sorry. I just really don't know what

24 I'm looking at here. I know that on the report

25 that the team would generate, it looked different

Page 141

1 than this output. I read the columns with you

2 here, but I just don't know.

3 Q. Again, obviously, I don't work for Giant

4 Eagle or HBC, never have. I've never seen one of

5 your internally-generated threshold reports. This

6 is what was produced to us, and I was given a lot

7 of these. So I'm trying to figure out if there's

8 something else I should be looking at and there's

9 something else that maybe should be provided that

10 can give me a better understanding of the

11 threshold reports.

12 We just went through the information that's

13 included on what I was provided. Is there any

14 additional information on the reports that you're

15 used to looking at?

16 A. I don't know any other information.

17 Again I'd be speculating. It shows stores which I

18 recognize store numbers. It's showing total

19 shipped, threshold quantity, product name and

20 everything we just discussed. As far as how this

21 report was used and what native format it is -- I

22 do know things were things provided to you in

23 native format because some things were in the

24 system and they had do screenshots.

25 I honestly can't tell you exactly what this

<p style="text-align: right;">Page 142</p> <p>1 is or how this was being used.</p> <p>2 Q. But if you were to go back to your</p> <p>3 office and asked to see the threshold report for</p> <p>4 October 2016, do you think that that report would</p> <p>5 have any additional information than what I have</p> <p>6 right here in front of me?</p> <p>7 A. I don't believe so.</p> <p>8 Q. A couple questions about this. Number</p> <p>9 one, you see the column, fourth column over is</p> <p>10 Total Shipped Quantity; correct?</p> <p>11 A. Yes.</p> <p>12 Q. So you agree that even though the</p> <p>13 quantity that was ordered exceeded the threshold</p> <p>14 just for that first one, 4500 is over the 4200</p> <p>15 threshold, that that quantity was shipped to the</p> <p>16 store?</p> <p>17 A. Again, I'm just going by what's on this</p> <p>18 page. I don't know whether it was shipped or not.</p> <p>19 I'm reading it like you.</p> <p>20 Q. And it says it was shipped.</p> <p>21 A. I'm reading that it says -- the title is</p> <p>22 ETL Shipped Quantity, and it says 4500.</p> <p>23 Q. And we know that this threshold -- first</p> <p>24 off, we can look down and we see the first seven</p> <p>25 or so entries are all for the same product;</p>	<p style="text-align: right;">Page 144</p> <p>1 the Oxydo, the threshold for every pharmacy is</p> <p>2 4213.83; correct?</p> <p>3 A. I'm sorry. Where are you at?</p> <p>4 Q. The first seven entries, the</p> <p>5 threshold --</p> <p>6 A. Oh, 4213?</p> <p>7 Q. Yeah.</p> <p>8 A. Yeah, 4213.83.</p> <p>9 Q. So even in October of 2016, the</p> <p>10 thresholds were uniform across the entire chain of</p> <p>11 Giant Eagle pharmacies?</p> <p>12 A. Yes, it appears to be based on what I'm</p> <p>13 reading here.</p> <p>14 Q. And the last thing I had a question</p> <p>15 about was the vendor is indicated as HBC. Do you</p> <p>16 see that?</p> <p>17 A. Yes.</p> <p>18 Q. And the schedule, as you can see for the</p> <p>19 Oxydo out to the right, is Schedule II; correct?</p> <p>20 A. Yes.</p> <p>21 Q. Did HBC ever have a license to</p> <p>22 distribute Schedule II?</p> <p>23 A. It never had a license nor did it ever</p> <p>24 distribute Schedule IIs.</p> <p>25 Q. Do you know why HBC is listed there?</p>
<p style="text-align: right;">Page 143</p> <p>1 correct?</p> <p>2 A. Correct.</p> <p>3 Q. And if we go to the far left-hand</p> <p>4 column, we see that that's for seven or eight</p> <p>5 different Giant Eagle stores; correct?</p> <p>6 A. Yes.</p> <p>7 Q. So all of these are Giant Eagle stores</p> <p>8 that have exceeded their threshold for oxycodone</p> <p>9 at whatever point in October this report was run;</p> <p>10 correct?</p> <p>11 A. Assuming we're looking at this right,</p> <p>12 that this is what their published threshold</p> <p>13 quantity was in that column, I'm following you.</p> <p>14 Q. And we know that that threshold that was</p> <p>15 set here in 2016, again the threshold was</p> <p>16 identical for all these different pharmacies</p> <p>17 regardless of where that pharmacy was located,</p> <p>18 what that pharmacy's average sales were, what</p> <p>19 their customer traffic were, the threshold was the</p> <p>20 same for all of them; correct?</p> <p>21 A. We went through how the threshold was</p> <p>22 set earlier, yes. And then looking at this</p> <p>23 report, a lot of the same numbers are in that</p> <p>24 column.</p> <p>25 Q. Well, just looking at the first drug,</p>	<p style="text-align: right;">Page 145</p> <p>1 A. I do not know why it's listed there.</p> <p>2 I'm sure it's an IT thing, from a coding, but...</p> <p>3 Q. I mean, in October of 2016, wouldn't</p> <p>4 prescriptions to Giant Eagle be coming from the</p> <p>5 new Giant Eagle RX distribution center?</p> <p>6 A. As we established in 2016, all of the</p> <p>7 drugs would be coming from the new distribution</p> <p>8 center which did have a license for Schedule IIs.</p> <p>9 Q. So you don't know why it says HBC here?</p> <p>10 A. I do not.</p> <p>11 Q. Go down about halfway through the page</p> <p>12 and if you look to the right, it's probably the</p> <p>13 easiest to find where I am, it starts saying</p> <p>14 Co-Gesic. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And do you have an understanding of what</p> <p>17 Co-Gesic is?</p> <p>18 A. No.</p> <p>19 Q. Do you have an understanding that it's</p> <p>20 an oxycodone combination product?</p> <p>21 A. I don't know what -- these are all</p> <p>22 different generics, and they're all different</p> <p>23 naming conventions. Based on this report, it's a</p> <p>24 Schedule II. If you're asking me do I know what</p> <p>25 Co-Gesic is exactly, I don't.</p>



Page 146

1 Q. You don't have an understanding that  
 2 Co-Gesic is a hydrocodone combination product?  
 3 A. Without looking it up, I don't.  
 4 Q. And the fact that it's a Schedule II  
 5 doesn't really mean much because this is after the  
 6 rescheduling happened in '14; correct?  
 7 A. Correct.  
 8 Q. So then what we're seeing for the rest  
 9 of this page here, for the entire second page and  
 10 then for the first third of the third page are  
 11 incidences where orders from Giant Eagle  
 12 pharmacies for Co-Gesic, which I'm going to  
 13 represent to you is a hydrocodone combination  
 14 product, are exceeding the threshold, which is  
 15 three times the monthly average for the last year.  
 16 Do you see that?  
 17 A. I'm seeing what's on this page. As far  
 18 as what their exact thresholds are, again, it's  
 19 listed as that on the top of the page. It would  
 20 appear as such, but without being able to validate  
 21 what I'm looking at or how I'm looking at this, I  
 22 can't answer with certainty.  
 23 Q. Well, according to what HBC has provided  
 24 us in this litigation, the threshold for this  
 25 hydrocodone combination product in October of 2010

Page 147

1 was -- let's just round up and say 5000.  
 2 A. I'm sorry. Where are you?  
 3 Q. I'm on the threshold for the Co-Gesic.  
 4 A. Which page?  
 5 Q. You can look at any of them. It's on  
 6 every single one.  
 7 So to make the numbers easier, if we round  
 8 up, the threshold was about 5000; correct?  
 9 A. Yes.  
 10 Q. So the threshold being 5000 means that  
 11 the 12-month, the one-year monthly average was  
 12 around 1800?  
 13 A. I'm sorry. Say that again, please.  
 14 Q. Sure. If the threshold is about 5000  
 15 for this hydrocodone combination product, that  
 16 would mean that the 12-month monthly average was  
 17 around 1800, 1900?  
 18 A. The way I look at this threshold  
 19 quantity, I'm having difficulty just understanding  
 20 is it for the month, is it for the year, is it for  
 21 the week? I understand what it says there.  
 22 Q. Well, you testified earlier that the  
 23 quantity is set on a monthly basis; right?  
 24 A. Yes.  
 25 Q. So what we're seeing here is a monthly

Page 148

1 quantity for this particular hydrocodone  
 2 combination product?  
 3 A. I know what the threshold is set at. I  
 4 don't know his report, what it's pulling and how  
 5 it's pulling it. Again, I'm making an assumption,  
 6 and I don't want to make assumptions.  
 7 Q. Well, let's do this then. If this 4895  
 8 is the monthly threshold that's been set for  
 9 Co-Gesic, that would mean that the average monthly  
 10 order for the past year for that drug had been  
 11 about 1900. Do you agree with that?  
 12 A. Well, it's 12 months worth of data.  
 13 Wouldn't the monthly average -- I'm not following  
 14 you. The monthly average is 4900 or 5000.  
 15 Q. That's three times the monthly average;  
 16 right?  
 17 A. Okay.  
 18 Q. You have to divide it by three. My math  
 19 is wrong. It's around 1750 would be the monthly  
 20 average, right, because the threshold is the  
 21 monthly average times three; correct?  
 22 A. My understanding is the chain's average,  
 23 monthly average times three.  
 24 Q. Correct?  
 25 A. Yes.

Page 149

1 Q. So that would mean that the monthly  
 2 average for Co-Gesic for the last year had been,  
 3 and again my math is horrible, but it's going to  
 4 be around 1700, 1750, somewhere in there. Do you  
 5 agree with that? If you divide 5000 by three, you  
 6 get something in that range?  
 7 A. Say it one more time, please.  
 8 Q. The threshold is the monthly average  
 9 times three; correct?  
 10 A. Chain average, yes.  
 11 Q. So if we did 5000 divided by three, we  
 12 get approximately 1700. Do you agree with that  
 13 roughly?  
 14 A. Yes.  
 15 Q. So the monthly average for the last year  
 16 for this hydrocodone combination product was  
 17 approximately 1700; correct?  
 18 A. The way you describe it, yes.  
 19 Q. But what we're seeing here is a list  
 20 of -- I don't know if you can kind of take a  
 21 schlag at how many different stores we're looking  
 22 at here that are on this list for being over the  
 23 threshold on this particular hydrocodone  
 24 combination product?  
 25 A. I'm sorry. I didn't follow your



<p style="text-align: right;">Page 150</p> <p>1 question.</p> <p>2 Q. I'm asking if you can tell me about how</p> <p>3 many different stores we're seeing here who are</p> <p>4 over their threshold for hydrocodone combination</p> <p>5 product. I think I counted 37 on the first page.</p> <p>6 Then we have the entire second page and then about</p> <p>7 half of the third page; correct?</p> <p>8 A. Yes.</p> <p>9 Q. So roughly 80, 90, a hundred stores, do</p> <p>10 you agree with that?</p> <p>11 A. Yes.</p> <p>12 Q. And all of these stores are exceeding</p> <p>13 not only the monthly average, but three times the</p> <p>14 monthly average for this particular hydrocodone</p> <p>15 combination product; is that correct?</p> <p>16 A. Again, I know what we just went through.</p> <p>17 I know the headings we went through. I just want</p> <p>18 to understand that threshold quantity. Is that</p> <p>19 the divide three, or is it times three? I don't</p> <p>20 know what I'm looking at there. Before I answer</p> <p>21 your question, I'd like to understand more about</p> <p>22 the --</p> <p>23 Q. Well, Mr. Tsipakis, I'm accepting your</p> <p>24 representation that the threshold that's</p> <p>25 established is the average for the last year times</p>	<p style="text-align: right;">Page 152</p> <p>1 that? I think it was store 60.</p> <p>2 A. Yes.</p> <p>3 Q. So we know that that's more than three</p> <p>4 times over the threshold; correct?</p> <p>5 MR. BARNES: Object to form.</p> <p>6 THE WITNESS: That's three times the</p> <p>7 4895 listed there, yes.</p> <p>8 BY MR. GADDY:</p> <p>9 Q. It's more than three times the</p> <p>10 threshold; right?</p> <p>11 MR. BARNES: Object to form.</p> <p>12 THE WITNESS: Again, you're trying to</p> <p>13 tell me that -- you're trying to -- again, as I</p> <p>14 mentioned, until I understand what these pieces</p> <p>15 are, I can't honestly tell you if it's three times</p> <p>16 its threshold. Is this report is something</p> <p>17 different than I think it is?</p> <p>18 Like I said, I'm happy to clarify that.</p> <p>19 Based on what you're asking me, there's a number</p> <p>20 4895 that's listed under the threshold quantity,</p> <p>21 and the other one is shipped.</p> <p>22 MR. BARNES: I think we need to take a</p> <p>23 lunch break.</p> <p>24 THE VIDEOGRAPHER: 12:29. We're off the</p> <p>25 video record.</p>
<p style="text-align: right;">Page 151</p> <p>1 three.</p> <p>2 A. That's how the threshold was set, yes.</p> <p>3 Q. And then a report is produced of any</p> <p>4 stores that have orders that exceed that</p> <p>5 threshold; correct?</p> <p>6 A. Where I'm having difficulty is this is a</p> <p>7 format in a report that I'm not familiar with, and</p> <p>8 you're asking me to testify with certainty that I</p> <p>9 know what I'm looking at.</p> <p>10 I'm happy to look at it further. I'm happy</p> <p>11 at a break to clarify it. I'm not trying to dodge</p> <p>12 your question. I just don't understand what I'm</p> <p>13 looking at.</p> <p>14 Q. Well, let's just keep looking at this</p> <p>15 and I'll just ask you a couple of questions, and</p> <p>16 we'll go on the assumptions that this report is</p> <p>17 what it should be, which is what you testified to,</p> <p>18 that the threshold is three times the monthly</p> <p>19 average. Okay?</p> <p>20 A. Yes.</p> <p>21 Q. So we're both going to make that</p> <p>22 assumption for the rest of this testimony. Okay?</p> <p>23 If you look at the first page, oh, about 10</p> <p>24 or 12 down in the Co-Gesic list, you see where</p> <p>25 there's a quantity shipped of 18,500. Do you see</p>	<p style="text-align: right;">Page 153</p> <p>1 (Recess from 12:29 p.m. to 1:33 p.m.)</p> <p>2 THE VIDEOGRAPHER: 1:33. We're on the</p> <p>3 video record.</p> <p>4 BY MR. GADDY:</p> <p>5 Q. Mr. Tsipakis, I want to go back to</p> <p>6 No. 14 and see if we can finish up with that</p> <p>7 document we were looking at before lunch. Do you</p> <p>8 have that document before you?</p> <p>9 A. Yes, sir.</p> <p>10 Q. I think that what we had determined or</p> <p>11 what we agreed to proceed on the assumption that</p> <p>12 the threshold quantity listed here under the title</p> <p>13 Threshold Quantity was equal to three times the</p> <p>14 monthly average for the previous year; correct?</p> <p>15 A. For the chain; correct.</p> <p>16 Q. And so with doing some rough math, what</p> <p>17 we determined was that this particular drug,</p> <p>18 Co-Gesic, which I'm representing to you is a</p> <p>19 hydrocodone combination product, if you divide the</p> <p>20 threshold by three, you get approximately 1700,</p> <p>21 which would have been the monthly average for the</p> <p>22 previous 12 months; correct?</p> <p>23 A. Correct, for the chain.</p> <p>24 Q. For the entire chain; correct?</p> <p>25 A. Correct.</p>

<p style="text-align: right;">Page 154</p> <p>1 Q. How many pharmacies in the entire chain?</p> <p>2 A. Over 200.</p> <p>3 Q. And what we also determined is that</p> <p>4 approximately 80 to 100 pharmacies are listed on</p> <p>5 this threshold report as exceeding that threshold</p> <p>6 in October of 2016; correct?</p> <p>7 A. On this report, yes.</p> <p>8 Q. And some of them, if we look at about</p> <p>9 the middle of the screen there, you see there's I</p> <p>10 think store 60, the total shipped quantity in</p> <p>11 October of 2016 is 18,500. Do you see that,</p> <p>12 18,500?</p> <p>13 A. Yes.</p> <p>14 Q. And I think we agreed that that's more</p> <p>15 than three times over the threshold; correct?</p> <p>16 A. For the chain, yes.</p> <p>17 Q. But that would also be over ten times</p> <p>18 higher than the monthly average for the last 12</p> <p>19 months; correct?</p> <p>20 A. I'm sorry. Say that again, please.</p> <p>21 Q. Sure. We identified that the monthly</p> <p>22 average for the last 12 months would have been</p> <p>23 1700; right?</p> <p>24 A. Correct.</p> <p>25 Q. So this 18,500 that this particular</p>	<p style="text-align: right;">Page 156</p> <p>1 Q. And you agree that this is more than</p> <p>2 four times -- excuse me -- this would be more than</p> <p>3 four times over the threshold; correct?</p> <p>4 A. The chain-wide threshold, yes.</p> <p>5 Q. And again, more than ten times over the</p> <p>6 monthly store average for the last 12 months?</p> <p>7 A. For the chain, yes.</p> <p>8 Q. And I'm not going to go through every</p> <p>9 single one of them, but if you flip through the</p> <p>10 next page, you see several additional stores that</p> <p>11 are more than two times, several that are more</p> <p>12 than three times the threshold that Giant Eagle</p> <p>13 and/or HBC had set for this particular hydrocodone</p> <p>14 combination product.</p> <p>15 A. Correct.</p> <p>16 Q. Now, was there any type of -- and again,</p> <p>17 this is October 2016. So this is after HBC</p> <p>18 stopped distributing Schedule III drugs; right?</p> <p>19 A. Correct.</p> <p>20 Q. What they had been distributing has now</p> <p>21 been reclassified as Schedule II; correct?</p> <p>22 A. For hydrocodone containing products,</p> <p>23 yes.</p> <p>24 Q. Thank you. Was there any type of policy</p> <p>25 in place about what would happen with anything</p>
<p style="text-align: right;">Page 155</p> <p>1 pharmacy received during October of 2016 is over</p> <p>2 ten times the monthly average for the chain for</p> <p>3 the past 12 months; correct?</p> <p>4 A. That is correct, but that is one of the</p> <p>5 our busiest stores. So the chain average takes</p> <p>6 our busiest stores and our slow stores, our less</p> <p>7 volume stores, and puts it together in an average.</p> <p>8 So stores on this list will be definitely over the</p> <p>9 average based on volume.</p> <p>10 Q. Because when HBC or Giant Eagle sets</p> <p>11 their thresholds, they do it chainwide. They</p> <p>12 don't take into account differences between</p> <p>13 stores; correct?</p> <p>14 A. For this report at this particular time,</p> <p>15 yes.</p> <p>16 Q. And if we go two entries down for it</p> <p>17 looks like store 71, we similarly see that that</p> <p>18 store is over ten times the monthly average for</p> <p>19 the last 12 months. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. And if we go down about 15 or so</p> <p>22 entries, we see I believe it's store 1405 which</p> <p>23 had 21,500 units shipped to it in October of 2016.</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 157</p> <p>1 that popped on this report?</p> <p>2 A. There was an expectation on the</p> <p>3 procedure -- and just for a matter of context, do</p> <p>4 you know the date of this report?</p> <p>5 Q. What date it was generated?</p> <p>6 A. Yes.</p> <p>7 Q. I believe I saw a cover sheet during the</p> <p>8 break that said it was October 31st of '16.</p> <p>9 A. Thank you. So the expectation on the</p> <p>10 procedure would be any store that shows up on this</p> <p>11 report, an investigation would be conducted.</p> <p>12 Q. Would it be fair to characterize this</p> <p>13 report as a tool that was utilized by Giant Eagle</p> <p>14 or HBC to investigate potential suspicious orders?</p> <p>15 A. One tool, but yes.</p> <p>16 Q. And you said there was an expectation</p> <p>17 that there would be an investigation; correct?</p> <p>18 A. Yes.</p> <p>19 Q. Is there an expectation that there would</p> <p>20 be an investigation into every single one of these</p> <p>21 controlled substances where the drugs have already</p> <p>22 been shipped exceeded the threshold?</p> <p>23 A. Yes. However some of them -- you just</p> <p>24 mentioned this report was dated the 31st. So it</p> <p>25 compounds. Each day compounds from the month. So</p>

<p style="text-align: right;">Page 158</p> <p>1 if they've already cleared a store earlier in the          2 month for whatever reason, then they wouldn't          3 reinvestigate it. But every line item would be          4 investigated and cleared.          5 Q. So they didn't wait until the end of the          6 month to start doing their research; correct?          7 A. Well, this generates every day. So if          8 something already showed up -- store 71 showed up          9 on the 15th of the month, and they already cleared          10 it, it would still show up on the report of the          11 31st.          12 Q. Who within Giant Eagle or HBC was          13 responsible, and if it's not a who, what          14 department was responsible for investigating each          15 of these?          16 A. The analytics -- the procurement          17 department, procurement department.          18 Q. And if I'm remembering your testimony          19 correctly, these reports began being generated in          20 2013; correct?          21 A. 2013; correct.          22 Q. If I already asked you this, I'm sorry,          23 but do you remember when in 2013, if it was early,          24 mid, late?          25 A. I don't recall.</p>	<p style="text-align: right;">Page 160</p> <p>1 those policies describe the actions that should          2 have taken place in response to each of these          3 orders popping on this report?          4 A. I think they describe components of it          5 or general expectations of it, but the exact          6 pieces, I don't know that it would spell out the          7 exact procedures.          8 Q. Is any -- I use the word investigation.          9 Are these investigations into each of these line          10 items, are they documented?          11 A. There is different forms of -- some are,          12 yes.          13 Q. Are all of them documented?          14 A. I don't know if all of them are          15 documented.          16 Q. Is there any policy or procedure that          17 requires any Giant Eagle or HBC employee to issue          18 any type of written report or memorandum or even          19 just a note indicating, for example, the first one          20 listed here, that they looked into this order of          21 Oxydo from store 71 and then issued their          22 determination that it is or is not something that          23 needs to be looked at further?          24 Is there any requirement that any type of          25 report like that be generated?</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. Was its always the procurement          2 department who was in charge of investigating          3 these?          4 A. The procurement department in          5 conjunction with the compliance department.          6 Q. And where does loss prevention fall in          7 here? Is loss prevention within either of those          8 departments?          9 A. Well, they're a stakeholder. So          10 certainly it's the procurement department, the          11 compliance department, and then the loss          12 prevention department is included in that. So if          13 we need to send them out for an investigation, we          14 need them to go retrieve a product, they're          15 certainly a stakeholder, yes.          16 Q. And we looked at some policies and          17 procedures earlier, and I think the earliest one          18 that we had was a 2015 policy, but it referred          19 back to an earlier version that was in August of          20 2014. Do you remember that?          21 A. Yes.          22 Q. And there were a couple of other          23 policies that predated 2014. Do you recall that?          24 A. Correct.          25 Q. And would it be accurate to say that</p>	<p style="text-align: right;">Page 161</p> <p>1 A. I haven't found anything that          2 specifically calls out that something needs to be          3 written down or documented or -- certainly there's          4 an expectation to investigate every one.          5 Q. And I'm not asking you to point me to a          6 piece of paper as we're sitting here right now          7 today, but if I was to ask you can you justify why          8 this order for store 71 of Oxydo, which is a CII,          9 was shipped over threshold and that it wasn't          10 clawed back or it wasn't reported to the DEA,          11 would you have the ability to go and give me an          12 answer to what was done to approve that?          13 A. Let me make sure I understand your          14 question. Can you repeat it one more time,          15 please.          16 Q. Sure. Essentially, what I'm trying to          17 figure out is whether or not HBC or Giant Eagle          18 maintains any type of due diligence files.          19 For example, this order for store 71 for this          20 controlled II substance pops on this report, if          21 you wanted to go back now two years after the fact          22 and see what did we do to justify and clear that          23 order, is that possible?          24 A. I don't know.          25 Q. As you sit here today, is there any</p>

<p style="text-align: right;">Page 162</p> <p>1 requirement or procedure in place to do any  2 maintaining or logging of any type of due  3 diligence or investigatory type efforts to clear  4 or justify orders that were received that may be  5 over thresholds or may be otherwise indicative of  6 diversion?  7 A. Yes. Over time more systems were  8 developed and abilities, yes.  9 Q. When did Giant Eagle or HBC put in place  10 a system that required employees to log or  11 maintain files that explained why particular  12 orders were cleared or not cleared?  13 A. I can say from the diligence I had in  14 early 2017, a system was developed where  15 investigative notes and information could be  16 entered regarding orders that we wanted to look  17 at, orders of interest.  18 Q. Prior to early 2017, HBC nor Giant Eagle  19 had any system that was dedicated to maintain  20 notes, reports or memos that would explain or  21 justify why particular orders were cleared or not  22 cleared?  23 A. We didn't have a repository if that's  24 what you're asking. There were certainly  25 definitive emails to the field, emails to the</p>	<p style="text-align: right;">Page 164</p> <p>1 that were kept -- I've seen some of them, so  2 definitely I know they exist.  3 Q. So fair to say that these orders that  4 popped on these threshold reports that started  5 coming out back in 2013 would lead Giant Eagle or  6 HBC to start to do some type of due diligence; is  7 that correct?  8 A. Yes.  9 Q. From 2009 until 2013, when HBC was  10 distributing hydrocodone combination products,  11 what would lead to HBC doing any type of due  12 diligence on any of the orders that were received  13 from the stores?  14 A. Certainly from as moved on, we improved  15 the processes and continued to add capabilities.  16 Your specific timeframe is what again, please?  17 Q. 2009 until the threshold reports started  18 being generated in 2013.  19 A. So in addition to other controls, one of  20 the mechanisms we would use is the integrated  21 approach I mentioned earlier to disclose  22 suspicious orders to us, which would prompt  23 investigation, similar diligence, no difference in  24 diligence, and running to ground whether an order  25 of interest was suspicious or not.</p>
<p style="text-align: right;">Page 163</p> <p>1 warehouse, things of sorts that clearly show a  2 diligence of trying to run the ground on why an  3 order happened or what triggered, sure.  4 Q. Can you say that that's the case for  5 every order that ever popped up on one of these  6 reports?  7 A. I can say after reviewing and talking to  8 associates involved and folks that do report to  9 me, that every order that pops up of interest is  10 investigated and either cleared or not.  11 Q. But you can't tell me as you sit here  12 today whether or not there's any documentation to  13 prove or disprove whether or not any or all of  14 those investigations actually happened?  15 A. I can tell you that I don't know that I  16 have specific for each line item on -- well, from  17 2017 on, I can tell you we have a repository that  18 was built. Prior to that, I cannot.  19 Q. That's probably the easiest way to do  20 this. Prior to early 2017, Giant Eagle nor HBC  21 had any repository or location, whether it's  22 physical or digital, to maintain any type of due  23 diligence reports or efforts; correct?  24 A. There was no central repository.  25 Certainly if there was folders or emails or things</p>	<p style="text-align: right;">Page 165</p> <p>1 Q. And that integrated approach would  2 involve the superintendent of the warehouse, the  3 pickers at the warehouse and the procurement folks  4 from HBC's side; correct?  5 A. And the stores, yes.  6 Q. Store is not HBC, is it?  7 A. The store is not HBC, but it's all part  8 of the same company, same system. It's part of  9 our system.  10 Q. But it's HBC who has the responsibility  11 to design and operate a system that detects  12 suspicious orders; correct?  13 A. Correct.  14 Q. Can you tell me between -- we can look  15 at that report, and we can -- assuming that in  16 October of 2016 Giant Eagle followed their  17 policies in place, if we estimate that there's 200  18 entries on that report, we could say that there  19 were 200 separate investigations done, due  20 diligence type investigations done in  21 October 2016; would that be fair?  22 A. I can tell you just by looking at some  23 of them and understanding the report better, we  24 have stores that are filling 6000 prescription as  25 week that are averaged against stores that are</p>



Page 166

1 doing 300 a week. So obviously, if you're doing  
2 as a chain-wide average, you're going to have a  
3 ton of false positives, which is predominantly a  
4 lot of these orders on these reports.  
5 Q. Well, isn't that a reason why having a  
6 chain-wide average isn't a very good idea?  
7 A. Again, it's our attempt to have a system  
8 in place. We're not just relying on a threshold.  
9 We're relying on a total system of the threshold  
10 being one of those controls.  
11 Q. Well, if you're relying on a system that  
12 uses an average and you have some stores that do  
13 300 scripts a week and some stores that do 6000  
14 scripts a week, you would agree with me that  
15 average probably isn't very helpful?  
16 A. I would agree with you it's probably  
17 flawed and it could be done better, which is why  
18 our second version of our threshold system was  
19 improved.  
20 Q. How long did Giant Eagle and HBC utilize  
21 this flawed version of the threshold report that  
22 used a chain-wide average, from 2013 until when?  
23 A. To be clear, I didn't say this report  
24 was flawed. I said the methodology of averages  
25 could lead to a false positive, which is what a

Page 167

1 lot of these reports -- lot of these orders on  
2 these reports are.  
3 Q. How long did Giant Eagle and HBC use  
4 this report?  
5 A. As I think was established earlier in  
6 testimony, this report started somewhere around  
7 2013.  
8 Q. I'm sorry. Until when? Tell me if I'm  
9 wrong, but I think you said that you no longer use  
10 a chain-wide average and now use a store average.  
11 A. Correct.  
12 Q. As we sit here today in 2018.  
13 A. Correct.  
14 Q. When did you stop using the chain-wide  
15 average that you indicated is somewhat of a flawed  
16 methodology that can produce false positives?  
17 A. It can produce false positives. Till  
18 2017. We changed, early 2017.  
19 Q. So if we were to look at the life of  
20 HBC's and Giant Eagle's threshold program, from  
21 2009 to 2013, there was no threshold program.  
22 From 2013 to 2017, there was a threshold program  
23 based on a chain-wide average. And from 2017  
24 through present, there's a threshold program  
25 that's based on individual stores' metrics setting

Page 168

1 the threshold?  
2 A. Correct.  
3 Q. From 2009 to 2013, what would cause HBC  
4 to perform a due diligence investigation? What  
5 about their system, what flags within the system  
6 would cause HBC to perform a due diligence  
7 investigation?  
8 MR. BARNES: Object to form. Asked and  
9 answered.  
10 Go ahead.  
11 THE WITNESS: So as we established  
12 earlier, we know what products are coming into our  
13 warehouse, what products are going out to our  
14 stores. Any pattern that would show -- our  
15 procurement team as well as the warehouse team, if  
16 they saw a spike in orders or a deviation of sorts  
17 from that, they would see that, and they would  
18 recognize that.  
19 BY MR. GADDY:  
20 Q. From 2009 to 2013, are you able to  
21 identify for me any orders of hydrocodone  
22 combination products that due diligence was ever  
23 performed on?  
24 A. I'm sorry. Ask that once more, please.  
25 Q. From 2009 until 2013, are you able to

Page 169

1 identify for me any orders for hydrocodone  
2 combination products that due diligence was ever  
3 performed on?  
4 A. I believe there is, but -- when you  
5 say -- so orders, obviously orders were placed  
6 from 2009 to 2013. I can see emails,  
7 investigative emails going back and forth on  
8 questions on orders or product movement,  
9 et cetera. So I did see that through my  
10 diligence. I'm sorry. I'm trying to understand  
11 your exact...  
12 Q. I'm trying to determine whether or not  
13 from 2009 to 2013 you can identify for me any  
14 orders on which due diligence was performed by  
15 HBC.  
16 A. I don't know.  
17 Q. Is there a software vendor that HBC or  
18 Giant Eagle utilizes for these threshold reports?  
19 A. No.  
20 Q. It's all internal?  
21 A. Yes.  
22 Q. This threshold system that was utilized  
23 beginning in 2013, was it developed -- was it  
24 developed and designed specifically to monitor for  
25 suspicious orders of controlled substances?



<p style="text-align: right;">Page 170</p> <p>1 A. It was developed to continue to improve          2 our suspicious order monitoring system, not to          3 replace anything that was done previous. It was          4 basically just to continue to improve upon it          5 using system-generated cues, et cetera.          6 Q. We can go back to the document if we          7 need to, but I'm going back to the regulation, the          8 1301.74(b), which is the regulation that requires          9 the registrants to design and operate a system to          10 disclose suspicious orders.          11 Do you recall that regulation also obligates          12 the registrant, in this case HBC, to inform the          13 DEA of suspicious orders when they're discovered?          14 A. Yes.          15 Q. And that's the case whether we're          16 talking about Schedule II drugs or whether we're          17 talking about Schedule III drugs; correct?          18 A. Correct.          19 Q. Do you understand that the pharmacies          20 are not supposed to receive suspicious orders of          21 drugs?          22 MR. BARNES: Object to form.          23 THE WITNESS: Can you clarify? I don't          24 follow your -- what is your question?          25</p>	<p style="text-align: right;">Page 172</p> <p>1 that was being done by Giant Eagle or HBC is          2 happening after the orders have been shipped;          3 correct?          4 A. Perhaps, yes, perhaps.          5 Q. Well, that's what the forms indicate;          6 correct?          7 A. Well, some of them -- obviously looking          8 at some of these -- you mentioned this report is          9 on the 31st of the month. So if you look at some          10 of these, as I testified earlier, some of these          11 would have already been cleared and some of them          12 you could already tell that there would be a false          13 positive.          14 So some of them you would have known -- you          15 would have known that -- you would have cleared          16 them early is what I'm trying to say knowing that          17 they were a false positive.          18 Q. But by the time the procurement folks          19 see this report, the pills have already been          20 shipped; correct?          21 A. They may have. The report -- the report          22 generates early in the morning. Stores don't          23 receive their orders till after they open. So          24 they would have been shipped, but not received in          25 some cases, in transit.</p>
<p style="text-align: right;">Page 171</p> <p>1 BY MR. GADDY:          2 Q. Does HBC agree that orders are not          3 supposed to be shipped to the pharmacies until          4 they have been deemed not suspicious?          5 MR. BARNES: Object to form.          6 You can answer.          7 THE WITNESS: Again, in our system,          8 since we have line of sight from the warehouse all          9 the way out to the dispensing level, our          10 pharmacists are filling prescriptions pursuant to          11 legitimate prescriptions, which then generate          12 orders, and we ship those orders to the          13 pharmacies.          14 BY MR. GADDY:          15 Q. My question is more about timing of the          16 shipping. So we looked at some of these threshold          17 or we looked at one of these threshold reports.          18 And the reports indicate on their face that orders          19 of pills that exceeded the threshold were shipped          20 to the stores that were in excess of the          21 threshold. And you told me that after the reports          22 are generated, they're looked at, and then some          23 level of investigation is done; is that correct?          24 A. Correct.          25 Q. You agree with me that any investigation</p>	<p style="text-align: right;">Page 173</p> <p>1 Q. Break that down for me. You state the          2 reports are generated early in the morning. What          3 does that mean?          4 A. I'm not sure of the exact time, but          5 certainly before our pharmacies open for business.          6 Q. What time do your pharmacies open for          7 business?          8 A. Some open at 9:00. Some open at          9 8:00 generally.          10 Q. Let me just ask it this way. Did HBC or          11 Giant Eagle have any policy in place that any          12 orders that popped on the threshold report were          13 not shipped until they've been cleared?          14 A. Not that I could find a policy.          15 Q. They're still operating under the          16 threshold policy today. Today are these orders          17 shipped or are they blocked merely because they          18 come up on the report, or are they shipped and          19 then the diligence is performed?          20 A. So in our experience, having looked at          21 reports having looked at thresholds, we generated          22 very few suspicious orders over the timeframe that          23 we've been operating. So I guess I'm trying to          24 understand.          25 In our environment, we're able to intercept,</p>

<p style="text-align: right;">Page 174</p> <p>1 retrieve, quarantine product all the way up to the          2 time it gets to the store, after it lands at the          3 store, when in transit with the truck. So we're          4 able to intercept -- the change of title never          5 happens. Giant Eagle owns the product. Giant          6 Eagle ships the product. Giant Eagle receives the          7 product at the stores. So I guess I'm just trying          8 to follow your question.          9 Q. Frankly, I'm trying to following your          10 answer. Because I said they're shipped before the          11 investigation happened, and your answer was, well,          12 the reports are generated early in the morning and          13 the pharmacies don't open until 8:00 or 9:00, so          14 maybe they haven't gotten there yet.          15 So my question is whether or not the orders          16 are shipped, whether or not there's a policy or a          17 rule, a procedure, that requires the orders to not          18 be shipped until somebody from procurement looks          19 at it and says, oh, that's a false positive, oh,          20 there's a justification for that.          21 Is there a policy, procedure or rule in place          22 that does such?          23 A. No.          24 Q. You mentioned just a few minutes ago          25 that I guess because you're shipping to your own</p>	<p style="text-align: right;">Page 176</p> <p>1 history of suspicious order reports in just a          2 second. So we'll get into that into a little bit          3 of detail. You don't remember any times where you          4 had to turn a truck around, don't remember any          5 times where you had to call a pharmacy and ask          6 them to put a tote to the side and not open it;          7 that hasn't happened?          8 A. Not that I've seen in what I've looked          9 at.          10 Q. So every time that orders have been          11 flagged or popped on this threshold report going          12 back to 2013, they've always been shipped, and          13 they've never been brought back?          14 A. As far as I can tell, no.          15 Q. From 2013 till we sit here today, every          16 order that's ever popped on HBC's or Giant Eagle's          17 threshold report as being over threshold has          18 always been shipped, has never been reported to          19 the DEA and has never been brought back?          20 MR. BARNES: Wait a minute. Object to          21 form.          22 BY MR. GADDY:          23 Q. Is that correct?          24 MR. BARNES: This is one report with a          25 hundred --</p>
<p style="text-align: right;">Page 175</p> <p>1 stores, I think the phrase you used was the title          2 never changes.          3 So what I'm asking about, are you aware of          4 instances where you've had to turn the truck          5 around and bring it back to the distribution          6 center because there's pills didn't need to go to          7 that store?          8 A. In our history, we've only had very few          9 suspicious orders, so we haven't had an instance          10 where we needed to grab an order back.          11 Q. You mentioned that you could go to a          12 store or quarantine an order at a store. Has          13 there ever been an instance that you're aware of          14 where HBC or Giant Eagle has had to call the store          15 and tell them, don't open that tote, put that to          16 the side, we got to come, get it back from you          17 because that order shouldn't have been shipped?          18 A. We haven't, but we've had instances          19 where we've shut off stores in the cases we've had          20 on our suspicious orders, shutting off stores from          21 being able to order any more product, either from          22 us or from our other wholesaler, our commercial          23 wholesaler. So steps quickly can be put into          24 place.          25 Q. And I'm going to ask you about the</p>	<p style="text-align: right;">Page 177</p> <p>1 MR. GADDY: That's all I'm asking. I'm          2 asking him the question, not you.          3 MR. BARNES: Don't trick him.          4 THE WITNESS: Can you ask the question          5 again, please?          6 BY MR. GADDY:          7 Q. 2013 through today, have there ever been          8 any controlled substances that have been flagged          9 on this report that have not been shipped to the          10 stores?          11 MR. BARNES: Object to form.          12 THE WITNESS: The orders that have been          13 flagged on this report were received by the          14 stores, is that your question?          15 BY MR. GADDY:          16 Q. I think you answered my question.          17 So every report -- every entry that's flagged          18 here on this report was sent to the stores;          19 correct?          20 A. Every entry on these stores, none of          21 them were flagged as suspicious. They were all          22 investigated and cleared.          23 Q. And that's fine if that's what the          24 answer is. I'm just trying to make sure that's          25 clear.</p>

<p style="text-align: right;">Page 178</p> <p>1 A. That is the answer. I'm telling you 2 what happens. 3 Q. Going back to 2013, as we sit here 4 today, every item that's showing up on this report 5 has been investigated and cleared? 6 A. Yes. 7 Q. From 2009 until 2014 -- here I'm only 8 asking about HBC; I'm not asking about the new 9 Giant Eagle distribution center -- do you have any 10 understanding of how many orders for hydrocodone 11 combination products HBC received from Giant Eagle 12 pharmacies? 13 A. I'm sorry. One more time. 2009 to 14 2014? 15 Q. Sure. I'm only asking about HBC. I'm 16 not asking about the Giant Eagle facility. 17 Do you have an understanding as to how many 18 orders for hydrocodone combination products HBC 19 received from Giant Eagle pharmacies? 20 A. How many orders HBC -- I'm sorry. I'm 21 just trying to follow. How many orders HBC 22 received? 23 Q. Correct. 24 A. From Giant Eagle pharmacies? 25 Q. Correct.</p>	<p style="text-align: right;">Page 180</p> <p>1 BY MR. GADDY: 2 Q. And that ARCOS tracks the delivery of 3 the pills from HBC to the Giant Eagle pharmacies? 4 A. Yes. 5 (HBC-Tsipakis Exhibit 15 was marked.) 6 BY MR. GADDY: 7 Q. I'll show you what I'll mark as 8 Exhibit 15. I'll represent to you that this is a 9 spreadsheet, pretty basic one that we put together 10 from the ARCOS database. 11 Do you see at the top it says HBC Dosage Unit 12 Distribution to Cuyahoga, Summit and all those in 13 Ohio. Do you see that? 14 A. Yes. 15 Q. And then below that it's got four drug 16 family, but the only one that would be relevant to 17 HBC is hydrocodone; correct? 18 A. From HBC, yes. 19 Q. Then it goes down under Cuyahoga County. 20 You see in the chart here the first time we have 21 any distribution from HBC is in 2009; correct? 22 A. Correct. 23 Q. And that's consistent with what you told 24 us about when HBC distributed these drugs? 25 A. Yes.</p>
<p style="text-align: right;">Page 179</p> <p>1 A. You're talking about returns? I'm 2 sorry. I'm not following the question. 3 Q. When I say order, I mean the pharmacy 4 submitting an order, hey, we need X number of 5 pills. 6 Do you have any idea -- and maybe I should 7 ask it this way -- do you have any idea of the 8 number of dosage units that HBC distributed to 9 Giant Eagle pharmacies of hydrocodone combination 10 products from '09 to '14? 11 A. I do not. 12 Q. Do you have any idea of how many doses 13 of hydrocodone combination products HBC 14 distributed to Ohio from '09 to '14? 15 A. I do not. 16 Q. Are you familiar with the concept of 17 ARCOS database? 18 A. Yes. 19 Q. Are you familiar with the fact that HBC 20 and now Giant Eagle has an obligation to report 21 its distribution of controlled substances to the 22 DEA and then it gets entered into this database 23 they call ARCOS? 24 MR. BARNES: Object to form. 25 THE WITNESS: Yes.</p>	<p style="text-align: right;">Page 181</p> <p>1 Q. And we see over the time period for 2 which we have ARCOS data, which coincidentally is 3 going to be the time period, is going to 4 encapsulate all the time period that HBC 5 distributed, that HBC distributed over 10 million 6 dosage units of hydrocodone combination products 7 to Cuyahoga County. Do you see that? 8 A. Yes. 9 Q. And from 2009 to 2014, zero of those 10 orders of hydrocodone combination products into 11 Cuyahoga County were deemed to be suspicious by 12 HBC; is that correct? 13 A. There was a suspicious order in 2013. 14 I'm not sure if it was a PA store or Ohio. 15 Actually, I think it was PA. So yes, that's 16 correct. 17 Q. Then we see Summit County right below 18 from it. '09 to '14, 8.8 million dosage units of 19 hydrocodone combination products were shipped into 20 Summit County during that six-year time period; 21 correct? 22 MR. BARNES: Object to form. 23 THE WITNESS: Yes. 24 BY MR. GADDY: 25 Q. And HBC determined that zero of those</p>

<p style="text-align: right;">Page 182</p> <p>1 orders were deemed to be suspicious; is that 2 correct? 3 A. We didn't have any suspicious orders. 4 We didn't have any suspicious orders in that 5 timeframe. 6 Q. And then very bottom column there, from 7 2009 until 2014 -- 8 MR. BARNES: I'm going to object this 9 portion in the chart. It's not part of the case. 10 BY MR. GADDY: 11 Q. Do you see the bottom part of it -- 12 MR. BARNES: Don't answer any questions 13 relating to the entire state. 14 MR. GADDY: You're instructing the 15 witness not to answer? 16 MR. BARNES: The special master has 17 ordered that only two counties in Ohio are at 18 issue in the case. Why are you violating that 19 discovery order? 20 MR. GADDY: I'm just asking a question. 21 MR. BARNES: And I'm objecting. 22 MR. GADDY: Are you instructing him not 23 to answer the question? 24 MR. BARNES: Yes. 25</p>	<p style="text-align: right;">Page 184</p> <p>1 at the beginning of the day, we looked at those 2 combined discovery responses. And let's grab 3 those again real quick, if you don't mind -- this 4 is No. 4 -- just so we can kind of match this all 5 together. I'm sorry. HBC 11. 6 Do you have that? 7 A. Yes. 8 Q. If you turn to .10 on that document. 9 A. .10? 10 Q. Yes. Page 10, sorry, up in the top 11 right-hand corner. 12 A. .10, okay. 13 Q. Do you see the question here is asked: 14 "Please identify and describe each suspicious 15 order your suspicious order monitoring system 16 identified since January 1, 2006 and produce all 17 documents related to it." 18 Do you see that? 19 A. Yes. 20 Q. And I'll represent to you we got a 21 paragraph of objections. And if you turn the 22 page, about halfway down the page on the 23 right-hand side, there's a sentence that starts 24 "HBC, however..." Are you with me? 25 A. I'm sorry. I'm just trying to find on</p>
<p style="text-align: right;">Page 183</p> <p>1 BY MR. GADDY: 2 Q. You mentioned just a second ago that 3 there was a suspicious order reported in 2013. 4 Was that into Cuyahoga or Summit counties? 5 A. It was not. 6 Q. Was it into the state of Ohio? 7 A. It was not. 8 Q. Was it for a hydrocodone combination 9 product? 10 A. It was not. 11 Q. From 2009 to 2014, did HBC ever report 12 as suspicious any orders for hydrocodone 13 combination products? 14 A. As a Schedule III while it was 15 classified a Schedule III, no. In general, no, 16 but it was Schedule III during that time. 17 Q. And never once during that time period 18 did HBC ever report any orders of that product as 19 being suspicious? 20 A. That's correct. 21 Q. I'll show you what I'll mark as 22 Exhibit 16. 23 (HBC-Tsipakis Exhibit 16 was marked.) 24 BY MR. GADDY: 25 Q. I'll represent to you -- if you recall</p>	<p style="text-align: right;">Page 185</p> <p>1 there -- HBC, however, I have it. 2 Q. It says, "HBC, however, did identify and 3 report a suspicious order for a Schedule III 4 opioid. That report identifies a suspicious order 5 for buprenorphine" -- did I say that right? 6 A. Yes. 7 Q. -- "containing products that HBC 8 identified as suspicious on January 20, 2016 and 9 reported it to the DEA on January 21, 2016." 10 Do you see that? 11 A. Yes. 12 Q. In your preparation to testify today, 13 did you become familiar with that suspicious order 14 that HBC and/or Giant Eagle reported in January of 15 2016? 16 A. Yes. 17 Q. And you understand that that was -- this 18 was two years after HBC stopped distributing 19 controlled substances; correct? 20 A. I'm sorry. Ask that question again. 21 Q. This suspicious order that's reported in 22 January of 2016, this is -- and I said two years 23 because it's approximately two years after HBC 24 stopped distributing hydrocodone combination 25 products.</p>

Page 186

1 A. Okay. I misread you. Two years after  
 2 hydrocodone products because it was reclassified  
 3 as Schedule II, yes.  
 4 Q. This drug that was shipped -- excuse  
 5 me -- this drug that was reported as suspicious in  
 6 January of '16, was that shipped by HBC or was  
 7 that shipped by the new Giant Eagle facility?  
 8 A. I believe it was shipped by HBC.  
 9 Q. But it was not a hydrocodone combination  
 10 product?  
 11 A. That's correct.  
 12 Q. And if you see down here at the bottom  
 13 of the answer, there's a bunch of Bates ranges  
 14 listed for documents; correct?  
 15 A. Yes.  
 16 Q. Go back to No. 16, if you don't mind.  
 17 A. 16?  
 18 Q. It's the one right in front of you  
 19 there. And I'll represent to you I've done here  
 20 the same thing I did with the last response that  
 21 we looked at where I combined all those Bates  
 22 numbers into one document so we can just look at  
 23 them all at one time. Does that make sense?  
 24 A. Yes.  
 25 Q. And I did the same thing again where I

Page 187

1 threw a blue piece of paper between the different  
 2 documents so we can keep track of what's what;  
 3 correct?  
 4 A. Yes.  
 5 Q. So if we look at the very first page  
 6 here, at the top we see an email from Joseph  
 7 Millward, January 21st of 2016; correct?  
 8 A. Yes.  
 9 Q. And the subject of this email is DEA  
 10 Notification of Suspicious Order?  
 11 A. Yes.  
 12 Q. And it says, "Team, attached is the  
 13 written notification of the suspicious order for  
 14 store 0054. We are required to notify the DEA  
 15 when we determine that an order for controlled  
 16 substances is suspicious. This complies with 21  
 17 CFR 1301.74(b).  
 18 Do you see that?  
 19 A. Yes.  
 20 Q. So HBC was certainly aware of their  
 21 obligations under the federal regulations?  
 22 A. Yes.  
 23 Q. And if we flip the page, we, in fact,  
 24 see the suspicious order notification that I  
 25 believe was faxed to the DEA; correct?

Page 188

1 A. I don't know how it was delivered, but  
 2 it was delivered to the DEA.  
 3 Q. And it's got the date of 1/21/16, Dear  
 4 agent in charge. It says, "HBC Service  
 5 Company" -- it gives its resignation number --  
 6 "has identified a suspicious order for  
 7 buprenorphine containing products from Giant Eagle  
 8 Pharmacy 54." It gives its registration number.  
 9 "The order was determined to be suspicious on  
 10 1/20/16."  
 11 Do you see that?  
 12 A. Yes.  
 13 Q. If you turn the page one more time, it  
 14 looks like we have -- it looks to me like we have  
 15 a confirmation fax page.  
 16 A. Okay.  
 17 Q. Does that look like what that is to you?  
 18 A. Yes.  
 19 Q. So no doubt that HBC knew its  
 20 obligations under the regulations; correct?  
 21 A. Yes.  
 22 Q. No doubt that HBC knew how to report a  
 23 suspicious order because we see them do it here;  
 24 correct?  
 25 A. Yes.

Page 189

1 Q. They knew how to get the order into the  
 2 hands of the DEA; correct?  
 3 A. To get the -- to report the order, yes.  
 4 Q. And I'll represent to you that several  
 5 of these emails are built on each other. So I'll  
 6 try to go back a little bit and we'll cover  
 7 several at a time. So I'm going to go to the  
 8 document which starts on .9, but it's an email  
 9 chain, so I'm going to go to the back, which is  
 10 .11.  
 11 A. I'm sorry. You're on?  
 12 Q. 13.11 at the top. You have the right  
 13 exhibit, Exhibit 16.  
 14 A. 13.11. Okay. Thank you.  
 15 Q. Do you see down at the bottom we see the  
 16 initial communication is from January 15, 2016.  
 17 The subject is Daily HBC Suspicious Purchasing  
 18 Report. Do you see that?  
 19 A. Yes.  
 20 Q. And would it be fair to say this is one  
 21 of those threshold type reports that we spent an  
 22 hour or so looking at earlier today?  
 23 A. Is this what's listed in 13.12?  
 24 Q. I think it is attached, yes.  
 25 A. Let me just take a look at it. It looks



Page 190	Page 192
<p>1 the same, yes.</p> <p>2 Q. If you then go to .10, the previous</p> <p>3 page, so we're going forward in the email chain,</p> <p>4 you get an email from Joe Millward; correct?</p> <p>5 A. Yes.</p> <p>6 Q. And he writes this email to Darren</p> <p>7 Evans. Who is Darren Evans?</p> <p>8 A. He's one of the pharmacy district</p> <p>9 leaders for Giant Eagle.</p> <p>10 Q. He covers an area in Pennsylvania which</p> <p>11 is where I think this report came out of?</p> <p>12 A. Yes.</p> <p>13 Q. It says, "Darren, Store 54 and to a</p> <p>14 lesser extent 2402 are increasing in buprenorphine</p> <p>15 products on a daily basis. Jason was able to pull</p> <p>16 together some data. This is potentially</p> <p>17 concerning. The store did not exceed the purchase</p> <p>18 threshold last month. This is a new trend at the</p> <p>19 Somerset stores."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And then he goes in and asks Darren to</p> <p>23 do some investigation; correct?</p> <p>24 A. I'll just read a little bit. Yes.</p> <p>25 Q. And these types of investigations, these</p>	<p>1 Q. And do you know what his position was?</p> <p>2 A. His exact title I'm not sure of, but he</p> <p>3 was on the compliance team that helped out looking</p> <p>4 at orders and things of interest.</p> <p>5 Q. My understanding is he was only with the</p> <p>6 company from 2015 to 2016.</p> <p>7 Do you know who filled his role before and/or</p> <p>8 after him?</p> <p>9 A. I don't know who filled it before.</p> <p>10 After it would have been George Chunderlik, who is</p> <p>11 also copied on this or who this was sent.</p> <p>12 Q. How long has George Chunderlik been in a</p> <p>13 compliance position for HBC?</p> <p>14 A. I don't know the exact number of years.</p> <p>15 Q. Can you estimate it? Is it more than</p> <p>16 10, more than 20?</p> <p>17 A. I believe it would be somewhere about</p> <p>18 five years, three to five years.</p> <p>19 Q. Who was the longest serving person with</p> <p>20 compliance duties as it relates to HBC or Giant</p> <p>21 Eagle?</p> <p>22 A. I don't know.</p> <p>23 Q. Do you know of anybody who's been</p> <p>24 serving in a compliance function with HBC or Giant</p> <p>25 Eagle longer than George Chunderlik.</p>
Page 191	Page 193
<p>1 are some of the things that were laid out in the</p> <p>2 policies that we saw that Giant Eagle adopted in</p> <p>3 2015 and -- I'm sorry -- 2014 and then 2015;</p> <p>4 correct?</p> <p>5 A. Yes, but I will tell you these type of</p> <p>6 inquiries would be happening all along as far as</p> <p>7 from talking to investigative folks and the folks</p> <p>8 that were involved. It would not be uncommon for</p> <p>9 something to trigger and then someone from</p> <p>10 corporate or the warehouse talking to the field.</p> <p>11 So that's what you're seeing here.</p> <p>12 Q. Well, are you aware of any investigation</p> <p>13 such as this that happened at any time from 2009</p> <p>14 to 2014?</p> <p>15 A. As far as written ones that I could find</p> <p>16 in preparation?</p> <p>17 Q. Correct.</p> <p>18 A. I didn't have any I could find.</p> <p>19 Q. If you go to .20 of this same document,</p> <p>20 we see an email from Jason Mullen. Do you see</p> <p>21 that?</p> <p>22 A. Yes.</p> <p>23 Q. Who is Jason Mullen and what does he do?</p> <p>24 A. Jason was one of the folks that worked</p> <p>25 on the compliance team.</p>	<p>1 A. I don't know exactly.</p> <p>2 Q. We see going back to .20, this email</p> <p>3 here from Jason, the top paragraph says, "I</p> <p>4 apologize for the lengthy email. Below is some</p> <p>5 analysis."</p> <p>6 So we're on the same page, because I kind of</p> <p>7 got sidetracked, but this is the analysis that</p> <p>8 he's doing into this potential suspicious order;</p> <p>9 correct?</p> <p>10 A. Is it okay if I read it?</p> <p>11 Q. Yeah, yeah.</p> <p>12 A. Okay. I've read it. Can you repeat</p> <p>13 your question?</p> <p>14 Q. My question was: You agree this is an</p> <p>15 email containing some analysis that he did on this</p> <p>16 potential suspicious order?</p> <p>17 A. Yes.</p> <p>18 Q. And he also says, "The attached is a</p> <p>19 spreadsheet." It goes into a little bit more</p> <p>20 detail. Then he starts giving some notes about</p> <p>21 what he found when he looked into these orders</p> <p>22 coming out of the store; correct?</p> <p>23 A. Yes.</p> <p>24 Q. And several things that he looked at</p> <p>25 were the number of different prescribers that were</p>

<p style="text-align: right;">Page 194</p> <p>1 issuing prescriptions for the drug in question;  2 correct?  3 A. Yes.  4 Q. He looked at the distance between the  5 pharmacy and the provider; correct?  6 A. Yes.  7 Q. He looked at the distance between the  8 patient residence and the pharmacy; correct?  9 A. Yes.  10 Q. He looked at the distance between the  11 patient residence and the doctor; correct?  12 A. Yes.  13 Q. He looked at -- I think if you turn the  14 page, he looked at how many were cash, paying in  15 cash versus how many were paying through a third  16 party; correct?  17 A. Yes.  18 Q. He also looked at how many were combo  19 therapy. My assumption is that means got multiple  20 prescriptions, or do you know?  21 A. I'm not sure what he means, but that's  22 what it says.  23 Q. Again, all of these different factors  24 are indicators that we saw identified in those  25 2014 and 2015 policies that we looked at this</p>	<p style="text-align: right;">Page 196</p> <p>1 investigation, I mean, there was investigations  2 done. What's the specific question?  3 BY MR. GADDY:  4 Q. Did you see anything from 2009 to 2014,  5 any type of level of detail of investigation that  6 we see here in Jason's 2016 email? Did you see  7 anything like that when you looked back or did  8 your research from 2009 to 2014 when HBC was  9 distributing hydrocodone combination products?  10 MR. BARNES: Object to form.  11 THE WITNESS: I did not, not that I  12 could find.  13 BY MR. GADDY:  14 Q. I'm going to show you what I'll mark as  15 17. I don't have this to put up on the screen.  16 This is what I just got this morning, so I only  17 have the one copy.  18 (HBC-Tsipakis Exhibit 17 was marked.)  19 BY MR. GADDY:  20 Q. I'm going to hand it to you in just a  21 second. I'm going to represent to you this is a  22 December 5, 2013 email from Joe Millward to  23 several individuals, including Greg Carlson who  24 you mentioned earlier, and the subject is --  25 MR. GADDY: Can I swap and give him the</p>
<p style="text-align: right;">Page 195</p> <p>1 morning that were put out by Giant Eagle; correct?  2 A. Yes.  3 Q. If you flip to .39, you see the response  4 to Jason's email from Joe Millward; correct?  5 A. Yes.  6 Q. Tell me what Joe Millward's role is.  7 A. I believe he was the senior manager of  8 compliance.  9 Q. And his response to Jason based on this  10 page and a half or so email that we looked at -- I  11 think it had some attachments, some charts he put  12 together -- Joe says, "Excellent work on the  13 spreadsheet, Darren. This will be powerful to  14 share with the store teams."  15 Do you see that?  16 A. Yes.  17 Q. Do you agree that this level of  18 investigation and due diligence that Jason did  19 here in January of 2016, you weren't able to find  20 any evidence that anything like this was done by  21 HBC between 2009 and 2014; is that correct?  22 MR. BARNES: Object to form.  23 THE WITNESS: I mean, there's clearly  24 communications, emails of inquiry, but I just  25 don't -- as far as when you say level of</p>	<p style="text-align: right;">Page 197</p> <p>1 one that's in evidence?  2 MR. BARNES: Sure.  3 BY MR. GADDY:  4 Q. So I've handed you No. 17 now. Do you  5 see that's a December 5, 2013 email from Joe  6 Millward, the subject being 2401?  7 A. Joe Millward, yes. That's who -- yeah,  8 Joe Millward.  9 Q. And what we just went through was a  10 suspicious order that was identified by HBC in  11 January of 2016. That's what we just went through  12 a minute ago; correct?  13 A. Sorry. Let me just read it. I'm sorry.  14 Your question was now that I had a chance to read  15 it?  16 Q. That's fine. I was actually asking  17 about the last one.  18 The last suspicious order that we looked at  19 was one that was reported by HBC for January 2016;  20 correct?  21 A. Correct.  22 Q. This is a separate suspicious order that  23 is being investigated by HBC; correct?  24 A. '16. Yes. I was just trying to  25 ascertain -- I know we had a suspicious order in</p>

<p style="text-align: right;">Page 198</p> <p>1 2013. Yeah, this is what you're showing me.          2 Q. And if you turn the page -- maybe I          3 should have started on the back page.          4 It says, "HBC team, can you please be sure          5 pharmacy 2401 does not receive this particular          6 item," which is buprenorphine, "until further          7 notice. Their ordering of the product has been          8 flagged as suspicious and are being reported to          9 the DEA."          10 Do you see that?          11 A. Yes.          12 Q. I probably should have started there.          13 A. Yeah, that made it a lot clearer. Thank          14 you.          15 Q. Is buprenorphine an oxycodone          16 combination product?          17 A. I don't know.          18 Q. Has it ever been a Schedule II drug?          19 A. No.          20 Q. From 2009 when HBC first began          21 distributing controlled substances until the          22 present, so all the way through HBC's lifetime and          23 now through the Giant Eagle RX distribution          24 center, how many suspicious orders have been          25 reported to the DEA?</p>	<p style="text-align: right;">Page 200</p> <p>1 you see that?          2 A. Yes.          3 Q. The subject of the email is Thrifty          4 White Notes. It says, "Team, I wanted to send a          5 note out regarding our trip to Thrifty White          6 yesterday in conjunction with the planned          7 warehouse move vault and refrigeration."          8 Do you see that?          9 A. Yes.          10 Q. What is Thrifty White?          11 A. Thrifty White is another regional          12 pharmacy chain.          13 Q. Is it white or right?          14 A. White, Thrifty White.          15 Q. What was the purpose in HBC and Giant          16 Eagle employees taking a visit to Thrifty White?          17 Let me ask you this: Are you aware          18 independently without reviewing the email?          19 A. No.          20 Q. I'll withdraw the question.          21 So it says the team went to Thrifty White          22 yesterday. Then it says in the next paragraph,          23 "Please chime into this email string with your          24 Thrifty White notes. Do not worry about          25 duplication. Just bring them."</p>
<p style="text-align: right;">Page 199</p> <p>1 MR. BARNES: I'm going to object. With          2 respect to the discovery cut-off, we're not going          3 to the present obviously. We've indicated in our          4 discovery responses that we're filing a June 1,          5 2018 discovery cut-off. So we would object to any          6 questions beyond that date generally.          7 THE WITNESS: To answer your question,          8 up until the date of June 1st of 2018, two, two          9 orders.          10 BY MR. GADDY:          11 Q. How many -- of those suspicious orders          12 that were reported, how many of those two orders          13 were for hydrocodone combination products?          14 A. Zero.          15 (HBC-Tsipakis Exhibit 18 was marked.)          16 BY MR. GADDY:          17 Q. I'm going to show what I'll mark as          18 Exhibit 18.          19 MR. GADDY: It's HBC 1005 internally.          20 BY MR. GADDY:          21 Q. And if you would start for me, please,          22 at the beginning of the email chain on page 2.          23 A. .2?          24 Q. Correct. It starts about halfway down          25 the page with an email from Robert McClune. Do</p>	<p style="text-align: right;">Page 201</p> <p>1 Do you see that?          2 A. Yes.          3 Q. And then if you look at the bottom of          4 that page and flip to the next page, you just kind          5 of see a set of bullet points, and there's a          6 heading in that about Thrifty White notes. Do you          7 see that?          8 A. Yes.          9 Q. And if we flip through back to the first          10 page of the document, do you see the response from          11 Joe Millward who I think you said was head of the          12 compliance department?          13 A. Yes.          14 Q. And he writes, "Here are my notes." And          15 the title of his notes are Thrifty White Visit          16 Notes 8/19/2015. Are you with me?          17 Note number one is, "Keep engaged with the          18 DEA through all steps of the process."          19 Do you see that?          20 A. Yes are.          21 Q. His second note that he writes is, "It          22 is critical to have a robust suspicious order          23 monitoring program."          24 Do you see that?          25 A. Yes.</p>

<p style="text-align: right;">Page 202</p> <p>1 Q. Would you agree that from 2009 to 2014,  2 HBC did not have a robust suspicious order  3 monitoring program?  4 MR. BARNES: Object to form.  5 THE WITNESS: I do not.  6 BY MR. GADDY:  7 Q. The next sentence says, "Relying on  8 thresholds is not good enough for the DEA."  9 Do you see that?  10 A. Yes.  11 Q. From '09 through '13, HBC didn't even  12 have thresholds; correct?  13 A. Correct.  14 Q. But you still believed that the  15 suspicious order monitoring program that HBC had  16 from '09 to '13 was robust?  17 A. Yes.  18 Q. It then goes on to say, "They have a  19 process to review the orders before they are  20 filled by the distribution center."  21 Do you see that?  22 A. Yes.  23 Q. And, in fact, that's opposite to HBC and  24 Giant Eagle's system where the orders are filled  25 and then reviewed afterwards; correct?</p>	<p style="text-align: right;">Page 204</p> <p>1 there's an (a) and (b) and then there's a little  2 lower case (i), and it gives some examples of  3 flags. Do you see that?  4 A. Yes.  5 Q. And it talks about this cash versus  6 insurance, something we talked about a little  7 already; correct?  8 A. Yes.  9 Q. It talks about geographical relationship  10 of the prescriber and patient to the pharmacy?  11 A. Yes.  12 Q. Talks about combo drugs or a combination  13 of controls being dispensed. Do you see that?  14 A. Yes.  15 Q. Again, these are all factors that we  16 ultimately end up seeing in a Giant Eagle policy  17 that comes out in 2015; correct?  18 A. Components of this, yes.  19 MR. BARNES: Jeff, if you're at a good  20 break, we've been going about an hour and 15  21 minutes.  22 MR. GADDY: Yeah. That's fine.  23 THE VIDEOGRAPHER: 2:43. We're off the  24 video record.  25 (Recess from 2:43 p.m. to 3:05 p.m.)</p>
<p style="text-align: right;">Page 203</p> <p>1 A. An investigation -- there could be  2 situations where investigation is happening while  3 orders are in transit for delivery, yes.  4 Q. So HBC and Giant Eagle did not have a  5 program to review the orders before they're  6 filled?  7 MR. BARNES: Object to form.  8 THE WITNESS: Giant Eagle had a process.  9 Some of the investigative work would not have been  10 before the order was shipped.  11 BY MR. GADDY:  12 Q. Then number three says that -- Thrifty  13 White, is that a standalone wholesale distributor,  14 or is that a distributor and a pharmacy?  15 A. It's a pharmacy.  16 Q. I went through a list earlier of other  17 folks that distribute to themselves. Thrifty  18 White would fall under this bucket as well,  19 correct, of pharmacies that distribute to  20 themselves?  21 A. Yes.  22 Q. Number three says, "Thrifty White has  23 instituted guardrails for dispensing of controlled  24 substances."  25 And then down below it, if you go down,</p>	<p style="text-align: right;">Page 205</p> <p>1 THE VIDEOGRAPHER: 3:05. We're on the  2 video record.  3 BY MR. GADDY:  4 Q. Mr. Tsipakis, I'm going to hand you HBC  5 1009, which I've marked, I believe, a Exhibit 19.  6 (HBC-Tsipakis Exhibit 19 was marked.)  7 BY MR. GADDY:  8 Q. Do you see this is a November 2015 email  9 from Joseph Millward?  10 A. Yes.  11 Q. And do you see the subject of the email  12 is SOMS: Suspicious order monitoring and  13 controlled drug monitoring. Do you see that?  14 A. Yes.  15 Q. And he's writing to Phillip Raub, John  16 Hutten and Roger Wolfe. Do you know what  17 department those folks are in and what they do?  18 A. I know who Phil Raub is, but I don't  19 know what department these folks are in.  20 Q. Who is Phil Raub and what does he do?  21 A. I know what he does today. I don't know  22 what he did at this time.  23 Q. What's he do today?  24 A. Today he works on our inventory team.  25 Q. Is he more of an IT computer-type</p>



<p style="text-align: right;">Page 206</p> <p>1 person?</p> <p>2 A. Yes.</p> <p>3 Q. And would it be accurate to say that one</p> <p>4 of his functions is designing or implementing</p> <p>5 technology or reports? Does that make sense to</p> <p>6 you?</p> <p>7 A. That doesn't exactly line up with what</p> <p>8 he does, no.</p> <p>9 Q. Describe what he does.</p> <p>10 A. He basically makes sure -- he's a</p> <p>11 liaison between like our McKesson, McKesson</p> <p>12 account rep and other manufacturers' delivery</p> <p>13 orders. Again, just to be clear, you're talking</p> <p>14 about what he does today; correct?</p> <p>15 Q. Yeah.</p> <p>16 A. So when we have late orders from</p> <p>17 McKesson or Cardinal, he'll follow up on those,</p> <p>18 stores, say they didn't get an order from the</p> <p>19 wholesaler, those kind of things. Inventory</p> <p>20 control would be a better way to say it.</p> <p>21 Q. Let's go back to this document. He</p> <p>22 says, "Phil, John and Roger, on Friday George and</p> <p>23 I participated in a conference call with Purdue</p> <p>24 Pharma, maker of top self controlled substances</p> <p>25 such as Oxycontin and Hyslinga ER, to discuss</p>	<p style="text-align: right;">Page 208</p> <p>1 Q. He goes down in the next paragraph to</p> <p>2 say, "It would be necessary to break dispensing</p> <p>3 down to the following examples: On weekly,</p> <p>4 monthly, quarterly and year-to-date timelines.</p> <p>5 And then he gives some examples of what type</p> <p>6 of information he would like to see HBC or Giant</p> <p>7 Eagle start gathering to issue these types of</p> <p>8 reports; correct?</p> <p>9 A. Yes.</p> <p>10 Q. And it includes I think in the first</p> <p>11 instance there -- it says the total number of</p> <p>12 prescriptions and the total number of -- and the</p> <p>13 percentage of controlled substance prescriptions;</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. And it talks about trying to figure out</p> <p>17 the percentage in cash versus the percentage with</p> <p>18 the discount card versus the percentage with</p> <p>19 insurance; correct?</p> <p>20 A. Yes.</p> <p>21 Q. Then in the next line, he talks about</p> <p>22 trying to determine the number and percentage of</p> <p>23 total prescriptions and controlled substances of</p> <p>24 what he calls there at the end his target</p> <p>25 chemicals, which would be oxycodone, hydrocodone</p>
<p style="text-align: right;">Page 207</p> <p>1 their SOM process."</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. It says, "In addition to thresholds,</p> <p>5 they purchase IMS data and look at the percentages</p> <p>6 of their meds as part of all prescriptions filled</p> <p>7 and the percentages that were filled as cash as</p> <p>8 opposed to third parties."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. He goes on there to say, "Kayla created</p> <p>12 a similar report a couple years ago. I'd like to</p> <p>13 incorporate something similar into our suspicious</p> <p>14 order monitoring and controlled substance</p> <p>15 monitoring processes."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. So in this November 15, 2012 email, Joe</p> <p>19 Millward, who I think you told us earlier was the</p> <p>20 head of the compliance division, is asking to</p> <p>21 incorporate looking at percentages of cash versus</p> <p>22 percentage of scripts paid for by third parties</p> <p>23 into the suspicious order monitoring program?</p> <p>24 A. I can see that he's inquiring about it,</p> <p>25 yes.</p>	<p style="text-align: right;">Page 209</p> <p>1 and Suboxone; correct?</p> <p>2 A. Correct.</p> <p>3 Q. This process of him wanting to be able</p> <p>4 to see reports on a weekly, monthly, quarterly and</p> <p>5 year-to-date basis is something that he's asking</p> <p>6 these folks to look into implementing here in</p> <p>7 November of 2015; correct?</p> <p>8 A. He's inquiring about them, yes. As far</p> <p>9 as what exactly he's trying to do, I can't -- I</p> <p>10 can speculate, but it's one email. Certainly,</p> <p>11 he's asking for more data.</p> <p>12 Q. Sure. But you saw in the first</p> <p>13 paragraph where he said that he wanted to</p> <p>14 incorporate this factor and these types of things</p> <p>15 into HBC's or Giant Eagle's suspicious order</p> <p>16 monitoring program; correct?</p> <p>17 A. Sure.</p> <p>18 Q. He's wanting to do that in November of</p> <p>19 2015; correct?</p> <p>20 A. He's inquiring about it in</p> <p>21 November 2015, and this is a standard of trying to</p> <p>22 improve the process and look deeper on things,</p> <p>23 sure.</p> <p>24 Q. And he's looking to add that layer, the</p> <p>25 percentage of cash versus third party, in November</p>

<p style="text-align: right;">Page 210</p> <p>1 of '15?</p> <p>2 A. Yes.</p> <p>3 Q. I'm going to show you what I will mark</p> <p>4 as Exhibit No. 20.</p> <p>5 (HBC-Tsipakis Exhibit 20 was marked.)</p> <p>6 MR. GADDY: This is HBC 1023, which</p> <p>7 we're marking as Exhibit 20.</p> <p>8 BY MR. GADDY:</p> <p>9 Q. And if we look at the first page, do you</p> <p>10 recognize this to be an email from Adam Zakin in</p> <p>11 March of 2016?</p> <p>12 A. Yes.</p> <p>13 Q. You can go ahead and turn to the back</p> <p>14 page so we can get to the earliest email in the</p> <p>15 chain.</p> <p>16 Do you see it says, "Hello, Joseph and</p> <p>17 George. As a follow-up to our discussions, I have</p> <p>18 attached our SOM solution proposal for your</p> <p>19 review. Once you've had a chance to review this</p> <p>20 internally, we would welcome an opportunity to</p> <p>21 talk through our two SOM options and answer any</p> <p>22 questions you have."</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. And it's from Gary at Buzzeo. Do you</p>	<p style="text-align: right;">Page 212</p> <p>1 A. Um-hum.</p> <p>2 Q. And he says, "Hi, Adam and Bob. I think</p> <p>3 it would be" -- and to be clear -- never mind.</p> <p>4 He's writing to Bob McClune and Adam Zakin;</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. Tell me who they are and what they do</p> <p>8 within HBC or Giant Eagle.</p> <p>9 A. At the time of this email; correct?</p> <p>10 Q. Sure.</p> <p>11 A. So at the time of this email, Adam is</p> <p>12 senior director of administration, which includes</p> <p>13 the procurement team. Bob works for Adam</p> <p>14 basically on the procurement and analytics team.</p> <p>15 Q. Are they both still with the company?</p> <p>16 A. Yes.</p> <p>17 Q. George says, "I think it would be</p> <p>18 worthwhile to talk to these guys about their SOM</p> <p>19 program. I'm curious to see their products. I'm</p> <p>20 going to set something up for us and include Jason</p> <p>21 unless you have any objections."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. If you go back up to the top of the</p> <p>25 page, you see Adam's response; correct?</p>
<p style="text-align: right;">Page 211</p> <p>1 see that?</p> <p>2 A. Yes.</p> <p>3 Q. Do you know what Buzzeo is?</p> <p>4 A. Yes.</p> <p>5 Q. What is that?</p> <p>6 A. Buzzeo is the compliance arm of IQVIA.</p> <p>7 They purchased Buzzeo years back. I'm familiar</p> <p>8 with them.</p> <p>9 Q. Do you know what the purpose of</p> <p>10 Buzzeo -- what service it is that they provide?</p> <p>11 A. Consultant services that they provide.</p> <p>12 Q. And what he's indicating here I think as</p> <p>13 we'll see as we go through, he wants to talk to</p> <p>14 Joe Millward and George Chunderlik regarding</p> <p>15 suspicious order monitoring programs; correct?</p> <p>16 A. Yeah. He's a salesmen trying to pitch a</p> <p>17 solution or a consultant or consulting engagement,</p> <p>18 sure.</p> <p>19 Q. If we go back to the first page and we</p> <p>20 go two-thirds of the way down, you see an email</p> <p>21 from George Chunderlik.</p> <p>22 A. First page?</p> <p>23 Q. Yes, about two-thirds of the way down.</p> <p>24 Are you with me, George Chunderlik on March 24,</p> <p>25 2016?</p>	<p style="text-align: right;">Page 213</p> <p>1 A. Yes.</p> <p>2 Q. He says, "We saw this. We're not there.</p> <p>3 At the end of day, the only thing it did that our</p> <p>4 current system would not do was stop the orders</p> <p>5 physically if there was a threshold."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. So in March of 2016, HBC or Giant Eagle,</p> <p>9 their current system would not physically stop the</p> <p>10 orders that rose above the threshold; correct?</p> <p>11 A. Correct.</p> <p>12 Q. This outfit was selling a product that</p> <p>13 would have stopped the orders that were identified</p> <p>14 as being above the threshold prior to them being</p> <p>15 shipped to the store, correct, at least according</p> <p>16 to George and Adam?</p> <p>17 A. I don't know what they were -- what they</p> <p>18 looked at, what was presented. So I can't</p> <p>19 speculate what it does or doesn't do.</p> <p>20 Q. That's what Adam is representing they</p> <p>21 did; correct? He says, "The only thing it did</p> <p>22 that our current system would not do was stop the</p> <p>23 orders physically if there was a threshold."</p> <p>24 A. That's what it says here and he</p> <p>25 represented here, yes.</p>

Page 214

1 Q. It says, "Also, it would benchmark  
2 against other retailer" and goes on to say, "It  
3 was fairly expensive in comparison to already  
4 having what we had for these two pieces of  
5 function."  
6 Do you see that?  
7 A. Yes.  
8 Q. He goes on to say, "If you want to bring  
9 them in to see them again, you can. I don't think  
10 Bob or I need to see them unless there's something  
11 specific you want us to see post your review. Let  
12 me know if you have any questions. Adam."  
13 Is that it for that email?  
14 A. Yes.  
15 Q. So in March of 2016, Giant Eagle and HBC  
16 did not have a system that would physically stop  
17 orders if they violate the threshold, and when  
18 offered to purchase or adopt a program that did,  
19 at least Adam Zakin's position was to not do that;  
20 correct?  
21 MR. BARNES: Object to form.  
22 THE WITNESS: In the research that I've  
23 done, there was a lot of different things the  
24 company was looking at, different external  
25 solutions, internal solutions, coding internally

Page 215

1 versus buying off the shelf. I believe I saw  
2 something about this was a cloud service that  
3 needed a tremendous amount of IT integration. So  
4 I think there's more to this.  
5 BY MR. GADDY:  
6 Q. As we sit here today, does HBC or Giant  
7 Eagle have a system that will physically stop  
8 orders from being shipped if they violate the  
9 threshold?  
10 A. For which time period? I'm sorry.  
11 Q. Now.  
12 MR. BARNES: Same objection. Take it  
13 through June 1 of '18.  
14 THE WITNESS: Yes.  
15 BY MR. GADDY:  
16 Q. June 1 of '18 HBC and Giant Eagle did  
17 have a system that would stop an order if it  
18 violated a threshold?  
19 A. Yes.  
20 Q. When did that happen?  
21 A. January of '17.  
22 Q. I'm going to show you HBC 1027 that I'm  
23 going to mark --  
24 A. Let me be clear. Early 2017. It might  
25 not be exactly January, but early 2017.

Page 216

1 Q. I'm going to show you what I've marked  
2 HBC 1027 or which is HBC 1027, which I'm going to  
3 mark as Exhibit 21.  
4 (HBC-Tsipakis Exhibit 21 was marked.)  
5 BY MR. GADDY:  
6 Q. Do you see this document is an email,  
7 and it's going to have some attachments. The  
8 email is from an individual named James Cornwell  
9 written in August of 2016. The subject of that  
10 email is Order Item Blocking, December 5, 2013.  
11 Do you see that?  
12 A. Yes.  
13 Q. Do you know who Mr. Cornwell is?  
14 A. Yes.  
15 Q. Who is he and what does he do?  
16 A. He's on the IT team. He works on the IT  
17 side.  
18 Q. He writes this email. He says,  
19 "Dominic, Phil, I didn't find much on this. I do  
20 see the SQL was written by Kayla."  
21 Do you know what SQL means?  
22 A. SQL, yes.  
23 Q. What does that mean?  
24 A. SQL code.  
25 Q. So she designed the program that's

Page 217

1 generating the report? Explain that for me,  
2 please.  
3 A. I know what SQL means. I don't know who  
4 Kayla is.  
5 Q. It goes on to say, "The requirements  
6 were utilizing a monthly average looking back at  
7 the last 12 months that had each item ordered  
8 based on GPI."  
9 Do you see that?  
10 A. Yes.  
11 Q. Is that describing the threshold system  
12 that was put in place in 2013?  
13 A. Yes.  
14 Q. It says, "This value was a monthly  
15 accumulation that reset the first of each month  
16 had which mirrored McKesson's system but left big  
17 holes in our logic."  
18 Do you see that?  
19 A. Yes.  
20 Q. Do you know what big holes Mr. Cornwell  
21 was referring to there?  
22 A. I do not.  
23 Q. Would you agree that it would not be  
24 good to have a suspicious order monitoring program  
25 with big holes in it.

<p style="text-align: right;">Page 218</p> <p>1 MR. BARNES: Object to form.</p> <p>2 THE WITNESS: If it was the only thing</p> <p>3 you were relying on. In our system we had --</p> <p>4 threshold it was one of multiple layers of how we</p> <p>5 complied with the controlled substance security</p> <p>6 requirement.</p> <p>7 BY MR. GADDY:</p> <p>8 Q. But you agree it would not be a good</p> <p>9 thing to have big holes in your suspicious order</p> <p>10 monitoring program?</p> <p>11 A. I think generally big holes are a bad</p> <p>12 thing.</p> <p>13 Q. It says, "If the items showed on the</p> <p>14 report, George evaluated it, and if it was</p> <p>15 determined it should be blocked, the blocking form</p> <p>16 was filled out."</p> <p>17 Do you see that?</p> <p>18 A. I'm sorry. Where were you?</p> <p>19 Q. I just kept reading. It says that items</p> <p>20 showed on the report George evaluated -- I'm</p> <p>21 sorry -- "If the item showed on the report, George</p> <p>22 evaluated it, and if it was determined it should be</p> <p>23 blocked, a blocking form was filled out."</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 220</p> <p>1 a one-page email. Then it has an attachment that</p> <p>2 we'll look at in just a second.</p> <p>3 A. Yes.</p> <p>4 Q. The subject of the email is Suspicious</p> <p>5 Order Monitoring. Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And it says, "Scope document attached we</p> <p>8 will review during tomorrow's call."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Turn to page 3 for me, .3 in the top</p> <p>12 right.</p> <p>13 A. .3?</p> <p>14 Q. Yes. And there at 1.0 it says</p> <p>15 Stakeholders.</p> <p>16 A. Yes.</p> <p>17 Q. Can you tell me what's meant by that?</p> <p>18 A. I would read it as I'm reading it here,</p> <p>19 folks that are involved in a particular meeting or</p> <p>20 constituents as part of a project, I guess.</p> <p>21 Q. Have you seen this document before that</p> <p>22 you're aware of?</p> <p>23 A. It's vaguely familiar, but I'm not sure.</p> <p>24 Q. As far as the stakeholders that are</p> <p>25 listed here, the project sponsor is Mark Doerr,</p>
<p style="text-align: right;">Page 219</p> <p>1 Q. It goes on to say, "The form expired at</p> <p>2 the end of each month, again a problem."</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Do you agree with Mr. Cornwell's</p> <p>6 suggestion that having a report that stopped at</p> <p>7 the end of each month and started over was a</p> <p>8 problem?</p> <p>9 MR. BARNES: Object to form.</p> <p>10 THE WITNESS: I don't know what he was</p> <p>11 looking at, what he was referring to. I'm just</p> <p>12 reading the words for the first time as you</p> <p>13 presented it. So it's hard for me to speculate</p> <p>14 what he was talking about here.</p> <p>15 BY MR. GADDY:</p> <p>16 Q. Then he says, "I have attached a SQL on</p> <p>17 the documentation on the blocking form. This form</p> <p>18 was my main focus on this project."</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. I'm going to show you HBC 1033, which</p> <p>22 I'm going to mark as Exhibit No. 22.</p> <p>23 (HBC-Tsipakis Exhibit 22 was marked.)</p> <p>24 BY MR. GADDY:</p> <p>25 Q. If you look at this, do you see this is</p>	<p style="text-align: right;">Page 221</p> <p>1 senior vice-president of pharmacy.</p> <p>2 A. Yes.</p> <p>3 Q. Is he still with the company?</p> <p>4 A. He is not.</p> <p>5 Q. Are you serving in that position now?</p> <p>6 A. I am, yes.</p> <p>7 Q. So if this meeting was happening</p> <p>8 currently, that would be your name there as</p> <p>9 opposed to his?</p> <p>10 A. Again, I don't know what this meeting is</p> <p>11 about, but if you're saying do I have the same</p> <p>12 title as Mark Doerr did here, yes.</p> <p>13 Q. The other folks listed, we've already</p> <p>14 talked about Adam Zakin a little bit. We talked</p> <p>15 about Bob McClune, George Chunderlik. Are these</p> <p>16 folks still with the company?</p> <p>17 A. Yes.</p> <p>18 Q. Turn to page .4. It says, "Prior to</p> <p>19 January 2016, Giant Eagle's drug control program</p> <p>20 was limited to the monitoring of store-based</p> <p>21 dispensing of Schedule II narcotics."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. It says, "Giant Eagle's primary and</p> <p>25 secondary suppliers of CII products were</p>



Page 222

1 responsible for the monitoring of orders from  
2 distribution centers to Giant Eagle retail  
3 pharmacies."  
4 Do you see that?  
5 A. Yes.  
6 Q. Let me ask you a couple of questions  
7 about that. From 2009 through 2014 -- I think we  
8 covered it this morning -- Giant Eagle did  
9 dispense Schedule II drugs. They just did not get  
10 them from HBC; correct?  
11 A. Correct.  
12 Q. Because these Schedule II drugs from '09  
13 to '14 were going to Giant Eagle, HBC would have  
14 visibility of those drugs; correct?  
15 A. Ask that again, please.  
16 Q. Sure. From '09 to '14, HBC is only  
17 distributing Schedule III, IV and V drugs;  
18 correct?  
19 A. Correct.  
20 Q. But because these Schedule II drugs,  
21 which are coming from, I think you said, McKesson  
22 and Anda are going to Giant Eagle pharmacies,  
23 information or data about how many Schedule II  
24 drugs or the frequency of Schedule II drugs or the  
25 quantity of Schedule II drugs going to those

Page 223

1 pharmacies, that is information that would have  
2 been available to HBC?  
3 MR. BARNES: Object to form.  
4 THE WITNESS: HBC didn't distribute  
5 those. Giant Eagle is aware of those purchases.  
6 Is that your question?  
7 BY MR. GADDY:  
8 Q. Sure. Well, HBC also didn't dispense  
9 the drugs, but you told us this morning that HBC  
10 would have been able to be aware of the percentage  
11 of cash versus third-party payers or percentage of  
12 controlled versus noncontrolled; correct?  
13 A. As part of a -- but they're not --  
14 they're not distributing the class II drugs.  
15 Q. I understand that. We're on the same  
16 page there. My question to you is a little bit  
17 different.  
18 If they wanted to, could they have determined  
19 the quantity of CII drugs going into the Giant  
20 Eagle pharmacies? That's information that could  
21 have been available to HBC just like the  
22 percentage of controlled versus noncontrolled that  
23 were being dispensed by the pharmacy; correct?  
24 MR. BARNES: Object to the form.  
25 THE WITNESS: Sure.

Page 224

1 BY MR. GADDY:  
2 Q. Was the quantity of Schedule II  
3 controlled substances going into Giant Eagle  
4 pharmacies from 2009 to 2014, was that something  
5 that was considered by HBC as a part of HBC's  
6 suspicious order monitoring program that they had  
7 during that time period?  
8 MR. BARNES: Talking about '09 to '14?  
9 MR. GADDY: Sorry.  
10 BY MR. GADDY:  
11 Q. The suspicious order monitoring program  
12 that you said HBC had during that time period,  
13 would evaluating Schedule II drugs going into  
14 Giant Eagle pharmacies be a part of that?  
15 MR. BARNES: What time period?  
16 MR. GADDY: '09 to '14.  
17 MR. BARNES: If it's not distributing.  
18 THE WITNESS: I'll ask the question to  
19 clarify. If I can read it back to you, so if I  
20 could speak it back to you.  
21 So you're asking me from '09 to '14 if HBC  
22 would evaluate someone else's orders and someone  
23 else's SOM process? I don't understand the  
24 question.  
25

Page 225

1 BY MR. GADDY:  
2 Q. I'm not asking about the SOM process  
3 from McKesson or Anda. I'm asking whether or not  
4 when determining whether orders of hydrocodone  
5 combination products were suspicious or not, was  
6 it a factor at all to HBC how many Schedule II  
7 drugs were also going to the same pharmacy?  
8 MR. BARNES: Object to form.  
9 THE WITNESS: HBC wouldn't be  
10 investigating that or have a line of sight to  
11 that. Could they get data? Sure. Corporately we  
12 would know, and the same procurement team we  
13 talked about as part of the controls that we have,  
14 they know what prescriptions are coming into our  
15 pharmacies.  
16 BY MR. GADDY:  
17 Q. So HBC would definitely have the ability  
18 to know the quantity and pattern of Schedule IIs  
19 going into the Giant Eagle pharmacies?  
20 A. They could, but for what purpose. I  
21 guess I don't understand your question. Could  
22 they find out? Sure.  
23 Q. So they could I think was the answer to  
24 my first question. Maybe you've answered my  
25 second question, which is: Was that a factor that

<p style="text-align: right;">Page 226</p> <p>1 HBC even considered in evaluating HBC's own  2 distribution of hydrocodone combination products  3 to those stores?  4 A. You're talking about Schedule II drugs;  5 right?  6 Q. Correct.  7 A. So Schedule II drugs, HBC has never  8 dispensed them. I'm sorry. I'm trying to answer  9 your question. I'm just not following your line  10 of questioning.  11 HBC has never distributed CII drugs. Those  12 CII drugs have always been -- from the timeframe  13 you're talking about, they've been procured from  14 McKesson.  15 Q. I understand that. I'll try again  16 because obviously I'm not doing a very good job of  17 explaining my question.  18 You talked this morning about -- you claim  19 that HBC had a suspicious order monitoring program  20 from '09 to '14. I think you said it was an  21 integrated program with these different players  22 involved. I'm asking if one of the factors that  23 was looked at by HBC was the quantity and pattern  24 of CIIs going into the stores.  25 MR. BARNES: And it was not</p>	<p style="text-align: right;">Page 228</p> <p>1 BY MR. GADDY:  2 Q. My understanding of what's being said in  3 this sentence is that if McKesson ships Schedule  4 II controlled substances to Giant Eagle, that  5 Giant Eagle's interpretation is that McKesson is  6 responsible for doing any monitoring of those  7 orders for whether or not they're suspicious.  8 MS. KVESELIS: Same objection.  9 THE WITNESS: McKesson is a separate  10 registrant as a wholesaler as we are. They have  11 their same obligations that we've established  12 during the testimony, and they would have the same  13 obligations as we would have.  14 BY MR. GADDY:  15 Q. We go back to the first page of this  16 document, this was a meeting that was being set in  17 November of 2016; is that correct?  18 A. I'm sorry. Where are you at?  19 Q. First page.  20 A. Yes.  21 Q. Sorry I'm bouncing right back, right to  22 .4 and going to the second paragraph. It says,  23 "The DEA regulation CFR 1301.74(b) specifically  24 requires that a registrant design and operate a  25 system to disclose to the registrant suspicious</p>
<p style="text-align: right;">Page 227</p> <p>1 (indecipherable)?  2 MR. GADDY: Correct.  3 THE WITNESS: HBC wouldn't have been  4 looking at the CIIs. They wouldn't have been  5 looking at products that it doesn't distribute.  6 Does that answer your question? I'm sorry. I'm  7 trying really hard to make sure I answer your  8 question.  9 Q. It does. Thank you.  10 Let's go back to the document here. The  11 first paragraph, what they say here is, "Giant  12 Eagle's primary and secondary suppliers of CII  13 products were responsible for monitoring orders  14 from distribution centers to Giant Eagle retail  15 pharmacies." Correct.  16 A. Yes.  17 Q. So that's consistent with something you  18 told me just recently, that if McKesson is  19 shipping CIIs to Giant Eagle pharmacies, McKesson  20 is responsible for making sure those orders aren't  21 suspicious.  22 MS. KVESELIS: Object to form.  23 THE WITNESS: Sorry. I didn't expect  24 that. Can you repeat that?  25</p>	<p style="text-align: right;">Page 229</p> <p>1 orders of controlled substances."  2 Do you see that?  3 A. Yes.  4 Q. And that's what we've been talking about  5 a lot today; correct?  6 A. Yes.  7 Q. It goes on to say, "Purposely vague, the  8 DEA leads the registrant," which is Giant Eagle  9 here, "to interpret the elements and metrics of  10 monitoring a system"; correct?  11 A. Yes.  12 Q. It then goes on to say, "It is the  13 belief of the business that Giant Eagle's  14 suspicious order monitoring program is 75 to 85  15 percent of where it needs to be."  16 Do you see that?  17 A. Yes.  18 Q. Is it still Giant Eagle and HBC's belief  19 that their suspicious order monitoring program is  20 only three-quarters of the way to where it needs  21 to be?  22 MR. BARNES: I'm going to object to  23 form.  24 Go ahead.  25 THE WITNESS: Without understanding,</p>

Page 230

1 again looking at this here for the first time  
2 here, I don't know -- I can only -- can you ask  
3 your question again for me?  
4 BY MR. GADDY:  
5 Q. Well, let me ask it this way: This is  
6 November 2016 document; correct?  
7 A. Yes.  
8 Q. And what's being said here is that Giant  
9 Eagle believes that their suspicious order  
10 monitoring program is only 75 to 85 percent of  
11 where it needs to be; correct?  
12 A. That's what it says, yes.  
13 Q. And we know that in the two years prior  
14 to this, there was actually some progress made;  
15 correct? In August of 2014, for the first time  
16 HBC had a written policy to monitor for suspicious  
17 orders; correct?  
18 A. Yes.  
19 Q. In 2015 they issued a second version of  
20 that policy; correct?  
21 A. Yes.  
22 Q. In 2015 they also for the first time had  
23 a written policy that provided for some detailed  
24 investigation to be performed on potential  
25 suspicious orders including factors like the

Page 231

1 geographical location of the prescriber, the  
2 geographical location of the patient, the  
3 geographical location of the pharmacy in relation  
4 to all those, the percentages of cash versus  
5 third-party payer. Do you recall that?  
6 A. Yes.  
7 Q. And all that came out in 2015; correct?  
8 A. The written form, yes.  
9 Q. So you agree there were some steps taken  
10 between August 2014 and the date of this document,  
11 November of 2016, that were some fairly  
12 significant steps for HBC and Giant Eagle as far  
13 as their controlled substance monitoring plan;  
14 correct?  
15 MR. BARNES: Object to form.  
16 THE WITNESS: Yes. And then this  
17 document here was the company's efforts to further  
18 the electronic portions of that system.  
19 BY MR. GADDY:  
20 Q. But here in November of 2016, after all  
21 those steps and the written policies that we  
22 talked about earlier today and that I summarized  
23 just now, even after those steps since August of  
24 2014, it was still HBC and Giant Eagle's belief in  
25 November of 2016 that their program was only 75 to

Page 232

1 85 percent of where it needs to be; correct?  
2 MR. BARNES: Object to form.  
3 THE WITNESS: I don't agree.  
4 BY MR. GADDY:  
5 Q. Is that what it says here in the  
6 document?  
7 A. That's what it says here in this  
8 document, but I don't understand -- I don't have a  
9 clear understanding of what the 75 to 85 percent  
10 is referring to because it's written by -- it's  
11 written by the IT department.  
12 So there was many things as I looked through  
13 a lot of systems that were being built, a lot of  
14 automated things that required a lot of system  
15 integrations, warehouse integrations. So I don't  
16 know what this is being referred to as 75 to 85  
17 percent.  
18 Q. But you're not disputing that the  
19 document says it's the belief of the business that  
20 Giant Eagle's suspicious order monitoring in  
21 November of 2016 is 75 to 85 percent of where it  
22 needs to be. You're not disputing that, are you?  
23 A. I'm not disputing what it says, no.  
24 Q. Mr. Tsipakis, I don't have any more  
25 questions at this time. I'm going to turn you

Page 233

1 over to my colleague, and he's going to have some  
2 questions.  
3 A. Thank you.  
4 EXAMINATION  
5 BY MR. ROTTINGHAUS:  
6 Q. Mr. Tsipakis, my name is Tom  
7 Rottinghaus. We met earlier this morning. I'm  
8 going to spend a little bit of time talking to you  
9 about some items that were in a second amended  
10 notice to take your deposition. Okay? But I'm  
11 going to jump around a little bit, so forgive me.  
12 I'm going to try to do that for the sake of time.  
13 MR. BARNES: Before we start, I've been  
14 informed that you intend to ask him questions  
15 about items which the parties had previously  
16 agreed were to be submitted in writing. And if  
17 that's true, then he's not been prepared for those  
18 questions, and I will instruct him not to answer.  
19 MR. ROTTINGHAUS: It won't be my  
20 intention to purposefully try to elicit something  
21 where there's been an agreement not to do so. If  
22 I engage in a topic you think I'm incorrectly  
23 doing so, just let me know. Okay?  
24 MR. GADDY: And, Bob, one of the issues  
25 we had or the topics we had issue with were three,

<p style="text-align: right;">Page 234</p> <p>1 four and five in the second notice. I'm happy to  2 be corrected if I'm wrong, but I don't believe  3 there was ever an agreement between the parties  4 that we would accept written responses to those  5 three topics.  6 In your letter to us, you indicated that that  7 was a topic that Special Master Cohen had ruled  8 was subject to written responses. His ruling was  9 to the contrary. He had said that -- again, these  10 are related to the rulings on the Wal-Mart  11 notice -- he had said that live testimony must be  12 provided on those topics.  13 We're happy to discuss it further, but those  14 are the only topics I think we have an issue with.  15 MR. KOBRIN: I don't think there are any  16 problems. For the record, Josh Kobrin for HBC.  17 This letter was sent two months ago. We never  18 heard a response back from you regarding three,  19 four and five in written form.  20 I don't know if there were orders before or  21 since on those issues, but we emailed you as  22 recently a two days ago when you said you might  23 want to discuss the topic and what was testified  24 to and I said let me know if you want to discuss  25 anything we represented to you previously, and you</p>	<p style="text-align: right;">Page 236</p> <p>1 Q. Yes.  2 A. SVP of pharmacy.  3 Q. When did you start with Giant Eagle?  4 A. Late October 2017.  5 Q. Prior to 2017, did you work for HBC?  6 A. I did not.  7 Q. Did you work for any other companies  8 either owned by or affiliated with Giant Eagle?  9 A. No.  10 Q. Have you personally ever worked in the  11 HBC plant that distributed Schedule III, IV and V  12 controlled substances?  13 A. No.  14 Q. Have you been to that plant before?  15 A. No.  16 Q. Is it a warehouse? It's a warehouse I  17 assume.  18 A. It's a warehouse, yes.  19 Q. You've never personally been to that  20 warehouse?  21 A. Correct.  22 Q. You mentioned the foreman that to your  23 knowledge worked at the warehouse between 2009 and  24 2014.  25 A. Yes. I'm not sure of all the years, but</p>
<p style="text-align: right;">Page 235</p> <p>1 guys did not accept an offer to meet and confer  2 before today.  3 So I assumed, I think rightfully, the thing  4 we represented previously was going to be how we  5 were going to proceed today.  6 MR. ROTTINGHAUS: Why don't I suggest I  7 start and you guys stop me if there's any concern.  8 Okay? Is that okay, Mr. Barnes?  9 MR. BARNES: We are presenting this  10 witness on other topics. So any questions related  11 to compensation, any compensation incentive  12 program or compensation provided to any employee  13 are off limits pursuant to the prior agreement.  14 MR. ROTTINGHAUS: You're talking about  15 paragraphs three and four?  16 MR. BARNES: Nos. 3, 4 and 5.  17 MR. ROTTINGHAUS: Let me get started and  18 stop me if you need to.  19 BY MR. ROTTINGHAUS:  20 Q. To back up, what's your position and  21 with which company are you currently employed? Is  22 it Giant Eagle?  23 A. Yes.  24 Q. What's your position there?  25 A. Current position?</p>	<p style="text-align: right;">Page 237</p> <p>1 yes.  2 Q. Have you ever personally met him?  3 A. No.  4 Q. Have you ever personally met anyone who  5 was employed by HBC between 2009 and 2014?  6 A. Specifically HBC?  7 Q. Yes.  8 A. No.  9 Q. Mr. Millward, was he an employee of HBC,  10 or was he an employee of Giant Eagle between 2009  11 and 2014?  12 A. Can I ask a clarifying question?  13 Q. Yes.  14 A. Giant Eagle owns all of them, so you're  15 asking whether they worked at a specific facility;  16 is that fair?  17 Q. Yes. Did he work at the Giant Eagle  18 facility or did he work at HBC's warehouse?  19 A. Joe Millward you had asked?  20 Q. Yes.  21 A. He worked at Giant Eagle corporate.  22 Q. And that's different; it's a different  23 physical location than where the HBC warehouse  24 was?  25 A. Correct.</p>



<p style="text-align: right;">Page 238</p> <p>1 Q. Similarly, Mr. McClune, did he work at  2 Giant Eagle and not at HBC?  3 A. Giant Eagle corporate and not HBC;  4 correct.  5 Q. Similar question with regard to  6 Mr. Zakin.  7 A. Corporate.  8 Q. Prior to 2017, where did you work?  9 A. The Albertsons Company.  10 Q. And prior to 2017, did you ever work for  11 or for any entity affiliated with Giant Eagle?  12 A. No.  13 Q. And I believe you said it was about four  14 or five weeks ago, give or take, that you were  15 informed that you would be the corporate  16 representative designated to testify on certain  17 topics in this case.  18 A. That's 30(b)(6)?  19 Q. Yes.  20 A. Yes.  21 MR. ROTTINGHAUS: Counsel, correct me if  22 I'm wrong, but it's my understanding that with  23 respect to the second notice, paragraphs number  24 one and two will be responded to in writing?  25 MR. BARNES: The second notice?</p>	<p style="text-align: right;">Page 240</p> <p>1 related to compensation provided to any employee  2 with oversight or control over marketing, sales or  3 distribution of prescription opioids.  4 MR. GADDY: Let's have a conversation  5 off the record.  6 THE VIDEOGRAPHER: Stand by.  7 MR. GADDY: I didn't mean we have to do  8 it right now. I'm saying at the next break.  9 MR. ROTTINGHAUS: Why don't we go past  10 that for right now.  11 MR. BARNES: Let's go off the record for  12 a second.  13 THE VIDEOGRAPHER: 3:45. We are off the  14 video record.  15 (Recess from 3:45 p.m. to 3:47 p.m.)  16 THE VIDEOGRAPHER: 3:47. We are on the  17 video record.  18 BY MR. ROTTINGHAUS:  19 Q. Sir, I believe you said earlier today  20 that you have seen some emails that you  21 interpreted at least as looking into prior orders  22 for controlled substances that could turn out to  23 be suspicious; is that correct?  24 A. Yes.  25 (HBC-Tsipakis Exhibit 23 was marked.)</p>
<p style="text-align: right;">Page 239</p> <p>1 MR. ROTTINGHAUS: Yes. While you're  2 looking, just to clarify, paragraph number one  3 falls under the topic of internal record keeping  4 and data storage.  5 MR. BARNES: Yes, one and two.  6 MR. ROTTINGHAUS: And it's the position  7 of counsel that with respect to the topics under  8 compensation, paragraphs three, four and five, the  9 witness will not be allowed to testify on those  10 topics today.  11 MR. BARNES: Well, I'm thinking you have  12 to go either/or. We're not going to agree to do  13 it in writing and then allow deposition  14 questioning. However, if you want -- if you  15 choose deposition questioning, then we won't do  16 writing. That's the agreement.  17 MR. ROTTINGHAUS: Well, it would  18 probably depend in part on whether he has any  19 knowledge. I'm not going to say I'm going to  20 choose one, ask him if he has any knowledge, have  21 him say no, and have you say, well, now we're not  22 responding. Is that what you're saying?  23 MR. BARNES: I think he may have some  24 knowledge related to compensation. This is all  25 about opioids, right, policies and procedures</p>	<p style="text-align: right;">Page 241</p> <p>1 BY MR. ROTTINGHAUS:  2 Q. I'm showing you Exhibit 23, which I  3 understand to be an email dated January 10, 2014  4 from Mr. Roahrig to Mr. Millward. Does it appear  5 that way to you as well at the top?  6 MR. ROTTINGHAUS: 1001.  7 THE WITNESS: Reading from the bottom,  8 from Joe Millward to Todd Roahrig, yes.  9 BY MR. ROTTINGHAUS:  10 Q. Why don't we start at the very bottom of  11 this. There's an email from a person named Kayla  12 Volkner to a number of people; is that correct?  13 A. Yes.  14 Q. And that email is dated January 10,  15 2014, and it states that there had been a pharmacy  16 that exceeded the purchasing thresholds for  17 certain controlled products so far that month; is  18 that right?  19 A. Yes.  20 Q. Then it appears that this email was  21 forwarded from Mr. Millward to Mr. Roahrig.  22 A. Yes.  23 Q. And he states that Store 8 is flagged.  24 Store 8, is that a -- do you know what location  25 Store 8 is?</p>

Page 242

1 A. I believe it's for our New Kensington,  
2 PA location.  
3 Q. Store 8 is flagged as having hit their  
4 threshold for total hydrocodone products. And he  
5 then asked if Mr. Roahrig had checked to see if  
6 this is an anomaly or that the order should be  
7 considered suspicious; is that correct?  
8 A. Yes.  
9 Q. And then ultimately he gets a response  
10 from Mr. Roahrig?  
11 A. Yes. He gets a response, yes.  
12 Q. It appears that Mr. Roahrig had been  
13 told by a pharmacist that this prescription,  
14 although it did contain hydrocodone, it was for  
15 what's called Hydrocan liquid, and he gives the  
16 explanation that he got from the pharmacist; is  
17 that right?  
18 A. Yes.  
19 Q. Now, we talked before about the daily  
20 reports that have thresholds mentioned in them; is  
21 that right?  
22 A. Yes.  
23 (HBC-Tsipakis Exhibit 24 was marked.)  
24 BY MR. ROTTINGHAUS:  
25 Q. I'm going to give you what we've marked

Page 243

1 as Exhibit 24 and represent to you that I  
2 understand --  
3 MR. ROTTINGHAUS: And that's 1055, top  
4 right-hand corner, 1055.  
5 BY MR. ROTTINGHAUS:  
6 Q. We looked at this type of spreadsheet  
7 earlier today; is that right?  
8 A. Yes.  
9 Q. And it's my understanding from looking  
10 at this, if you look actually back to the first  
11 page, the date of this report is January 31 of  
12 2014?  
13 A. January 31, 2014?  
14 Q. Yes.  
15 A. Okay.  
16 Q. To the second page, if we look at the  
17 spreadsheet, and also referencing --  
18 MR. BARNES: I'm not finding that date.  
19 I'm seeing December 31 of '13 on the first page.  
20 MR. ROTTINGHAUS: I apologize. I may be  
21 looking at the wrong.  
22 BY MR. ROTTINGHAUS:  
23 Q. You do have the January in front of you.  
24 This is all one of one exhibit. What number is  
25 that?

Page 244

1 A. 24.  
2 MR. ROTTINGHAUS: Let's go off the  
3 record for one second.  
4 THE VIDEOGRAPHER: 3:52. We are off the  
5 video record.  
6 (Recess from 3:52 p.m. to 3:56 p.m.)  
7 THE VIDEOGRAPHER: 3:56. We are on the  
8 video record.  
9 BY MR. ROTTINGHAUS:  
10 Q. We just clarified what we're looking at  
11 here. So that the record is clear, I'm going to  
12 be referring you to what I understand to be  
13 end-of-the-month reports for several months,  
14 including January of 2014, December of 2013,  
15 November of 2013, October of 2013, and then  
16 although it will look out of order, one from May  
17 of 2014. Okay?  
18 A. Yes.  
19 Q. Going back to the January 2014, page  
20 1055 at the top right, second page of that appears  
21 to be a spreadsheet like we talked about before?  
22 A. Yes.  
23 Q. Does that look familiar to you?  
24 A. Yes.  
25 Q. Again, I think you said before, that

Page 245

1 this looked a little different than you've ever  
2 seen it before, the information; is that right?  
3 A. I was used to seeing it in this format,  
4 and the multiple pages threw me this morning.  
5 Q. Does it look somewhat more familiar to  
6 you now?  
7 A. Yes.  
8 Q. I was going to ask you, to your  
9 knowledge, is there someone at HBC who would have  
10 the most knowledge about how this spreadsheet was  
11 designed and how it was operated between 2009 and  
12 2014?  
13 A. I don't know.  
14 Q. Would it be a system at Giant Eagle or  
15 would it have been a system designed by someone at  
16 HBC?  
17 A. Probably within the IT department at  
18 corporate.  
19 Q. At Giant Eagle?  
20 A. Yes.  
21 Q. Going back to the email we were just  
22 discussing, I think Exhibit 23, from Mr. Roahrig  
23 to Mr. Millward, Mr. Roahrig is referring to the  
24 Hydrocan liquid and trying to address the concern  
25 that was raised about store number 8; is that

Page 246

1 right?  
2 A. Yes.  
3 Q. And this is in January of 2014?  
4 A. Yes.  
5 Q. If we go back to Exhibit 24 and if we  
6 look four lines down, we'll see store number 8 or  
7 pharmacy number 8.  
8 A. Yes.  
9 Q. Looking at this, would it be your  
10 understanding that Mr. Roahrig and Mr. Millward  
11 were having a discussion about this specific store  
12 that we see, store number 8?  
13 A. It references store 8 and I'm reading  
14 store 8 on this. I'm not sure which report  
15 they're looking at or which line item or what  
16 order they're looking at.  
17 Q. Well, to back up, the email was  
18 referenced on January 10th of 2014, and it was  
19 started that morning it looks like, maybe even on  
20 January 9. But it's referencing store number 8.  
21 A. Yes.  
22 Q. And if we are correct that this  
23 spreadsheet is referencing all of the products  
24 that exceeded thresholds for January of 2014, we  
25 would see store number 8 did indeed exceed its

Page 247

1 threshold showing the total quantity shipped of  
2 8514 with the threshold quantity being 6868.  
3 A. Yes.  
4 Q. You said before that you thought -- and  
5 this again appears to have a chain-wide average  
6 for the threshold quantity.  
7 A. Yes.  
8 Q. You said before that you thought using a  
9 chain-wide average could lead to false positives?  
10 A. For sure, yes.  
11 Q. And by the same token, could using a  
12 chain-wide average also lead to false negatives?  
13 A. I'm not a mathematician, but I believe  
14 looking here at store 8 that you're asking on,  
15 that's one of our busiest stores in the chain, and  
16 I'm not surprised that it would have been over  
17 threshold from looking at this number.  
18 Q. My question is a little different,  
19 however. Not looking just at store number 8 and  
20 not looking at just at the information on this  
21 spreadsheet, would you agree that while using a  
22 chain-wide threshold can lead to false positives  
23 for some stores, could it also lead to false  
24 negatives or a sense of reassurance for some  
25 stores that may actually be using or ordering a

Page 248

1 lot more of a hydrocodone product than it normally  
2 would?  
3 A. It's possible.  
4 Q. If we go to the next document in this  
5 set, 1054, this is the end-of-the-month report for  
6 December 2013. If you'll go to the page with the  
7 spreadsheet information on it, we see store number  
8 8 again; is that right?  
9 A. Yes.  
10 Q. I think it's about four stores down.  
11 Are you with me?  
12 A. Yes.  
13 Q. And for store number 8 this month, we  
14 see a total shipped quantity of 14,663?  
15 A. Yes.  
16 Q. And a threshold quantity of 7175?  
17 A. Yes.  
18 Q. And if you do the math, correct me if  
19 you think I'm wrong, but that appears to be a  
20 little over six times the monthly average?  
21 A. Based on this threshold, yes.  
22 Q. Would you expect a daily or a report  
23 like this to raise questions about store number 8  
24 similar to the questions that were raised in  
25 January of 2014?

Page 249

1 A. Yes.  
2 Q. In getting ready for this deposition and  
3 looking through the documents you looked through  
4 and in speaking to the individuals you told us you  
5 have spoken to, did you become aware of anyone  
6 raising any concerns about store number 8 and the  
7 amount of shipments to store number 8 in December  
8 of 2013?  
9 A. Not specifically, no.  
10 Q. Do you have all of the exhibits in front  
11 of you still?  
12 A. Yes.  
13 Q. Could you go back to Exhibit No. 12,  
14 which is the suspicious order monitor policy.  
15 MR. BARNES: Are we done with this?  
16 MR. ROTTINGHAUS: We may go back to it,  
17 so keep it handy.  
18 BY MR. ROTTINGHAUS:  
19 Q. Specifically page referenced under 12.1.  
20 MR. BARNES: Exhibit 12? It says 12,  
21 then 12.2. You said 12.1?  
22 MR. ROTTINGHAUS: Forgive me. It's 12,  
23 just 12. I apologize.  
24 BY MR. ROTTINGHAUS:  
25 Q. So we're again looking back now at the

Page 250

1 inventory control suspicious order policy that was  
2 enacted back in August of 2014?  
3 A. Yes.  
4 Q. I see a name there, the policy owner  
5 being Matt Rogos?  
6 A. Yes.  
7 Q. Do you know that person?  
8 A. I do not.  
9 Q. Do you know whether Mr. Rogos indeed  
10 worked for HBC back in 2014?  
11 A. I do not, no.  
12 Q. Do you know whether he currently works  
13 for Giant Eagle?  
14 A. I do not.  
15 Q. Did you have an opportunity to try to  
16 speak with Mr. Rogos to find out about his  
17 knowledge concerning this policy?  
18 A. Are you asking me if I tried to reach  
19 out to Mr. Rogos?  
20 Q. Yes.  
21 A. No.  
22 Q. Stay on that page with me, but go down  
23 towards the bottom under Procedures. You'll see  
24 some bullet points.  
25 A. Yes.

Page 251

1 Q. Go down to the second bullet point, and  
2 I'm going to read it, and tell me if I'm reading  
3 it incorrectly. Okay?  
4 A. Yes.  
5 Q. It appears to me the second bullet point  
6 states that "Suspicious order criteria include,  
7 but are not limited to, purchases over a defined  
8 period that exceed a predetermined threshold."  
9 Did I read that correctly?  
10 A. You did.  
11 Q. At least if we read that portion of this  
12 policy, Exhibit 12, and we apply it to the  
13 spreadsheet that we were just looking at for  
14 December of 2013, does it appear to you that any  
15 amount shipped in excess of the threshold quantity  
16 should at least raise a question in someone's mind  
17 as to whether there indeed is a suspicious order?  
18 A. Yes.  
19 Q. Are you able to sitting here today tell  
20 us whether anybody raised any questions or raised  
21 any red flags about the December 2013 order by  
22 store number 8 or the shipment to store number 8  
23 that month and whether it indeed was a suspicious  
24 order?  
25 A. I can't tie back specifically to that,

Page 252

1 but certainly we just discussed a conversation  
2 with the field ops. and corporate regarding store  
3 8.  
4 Q. We did, and that was actually the month  
5 after December 2013, January 2014.  
6 A. Yes.  
7 Q. And at least in January of 2014, someone  
8 wanted to look into the ordering pattern of store  
9 number 8 to find out whether this indeed was a  
10 suspicious order for January of 2014?  
11 A. Yes.  
12 Q. But going back to 2013, at least sitting  
13 here today, you're not aware of anyone questioning  
14 the order by store number 8 in December 2013?  
15 A. I don't have anything in front of me  
16 that there was or wasn't; correct.  
17 Q. Have you seen any documents or any  
18 emails by anyone concerning any questions about  
19 the orders by store number 8 in December of 2013?  
20 A. I did not.  
21 Q. If you go to page 1053, I'll represent  
22 to you that this appears to be an end-of-the-month  
23 report for November 2013 dated specifically 30  
24 November 2013. Are you with me?  
25 A. For November 2013?

Page 253

1 Q. Yes.  
2 A. Yes.  
3 Q. If you'll go to the spreadsheet, please.  
4 And if you go down to store number 8, which I  
5 believe is the fourth store from the bottom, and  
6 if you look at the amount shipped in November of  
7 2013 to store 8, it appears to be 12,298?  
8 A. Yes.  
9 Q. With a threshold quantity being 7257?  
10 A. Yes.  
11 Q. And correct me if you think I'm wrong,  
12 but by my math, that's five times the monthly  
13 average?  
14 A. Yes.  
15 Q. And knowing what you've told us about  
16 your understanding of the store looking into any  
17 orders that it thinks should be of concern, would  
18 you have expected HBC or someone at HBC to have  
19 investigated the amount shipped for the  
20 hydrocodone product to store number 8 in that  
21 month?  
22 A. I would have expected someone to look at  
23 at each line item on the report or daily  
24 throughout the month on this report and do their  
25 due diligence on each of these line items, yes.



Page 254

1 Q. Would that be an investigation you would  
2 expect to be done by the procurement department?  
3 A. It's a combination. I think as we saw  
4 in other documents, procurement would have been  
5 involved. Compliance is involved in some cases.  
6 Loss prevention is involved. So it's a whole  
7 litany of folks depending what they need to look  
8 at.  
9 Q. If you go now with me to internal  
10 reference 1052, which is the end-of-the-month  
11 report of October 2013, again, to the best of your  
12 knowledge at least in 2013, the threshold quantity  
13 was being applied across the store chain, an  
14 average across the store chain; correct?  
15 A. Correct.  
16 Q. If you go to the second page, the  
17 spreadsheet, with me, if you go to the very  
18 bottom, you'll find store 8 again.  
19 A. Yes.  
20 Q. And here in -- at least at the end of  
21 October of 2013, does it appear to you that the  
22 total amount shipped of the hydrocodone products  
23 to store number 8 exceeded the threshold quantity?  
24 A. Yes.  
25 Q. And again, you're not aware at least for

Page 255

1 this month of any emails by anyone asking anyone  
2 to look into whether store 8 had any abnormal  
3 ordering patterns for the hydrocodone products?  
4 A. I don't have any specific knowledge of  
5 them or not.  
6 Q. I have one more spreadsheet I want to  
7 ask you about, and it actually jumps forward. It  
8 fast forwards now to May of 2014. Let me know  
9 when you're with me.  
10 A. What number is that?  
11 Q. I think May of 2014. Is that what you  
12 have?  
13 A. Is it 1059 in the corner?  
14 Q. Yes, 1059.  
15 A. I'm tracking with you.  
16 Q. And if you'll go to the second page of  
17 the spreadsheet again with me, again, you'll see  
18 store number 8 about in the middle of that  
19 spreadsheet.  
20 And would you agree with me that the amount  
21 shipped in this month of 10,879 exceeded the  
22 threshold quantity, which was 5598?  
23 A. Yes.  
24 Q. And is it your understanding that even  
25 as of 2016, the threshold quantity was still being

Page 256

1 applied as an average across the store chains?  
2 A. Yes.  
3 Q. I think I'm done with that exhibit.  
4 When talking about the threshold system that  
5 was put in place in 2013, I think I heard you  
6 earlier say that it was done to improve the system  
7 of monitoring for suspicious orders.  
8 A. To add further layers, yes.  
9 Q. Looking back, do you think back in 2013  
10 putting the threshold system in place the way it  
11 was put in place, that it was indeed an  
12 improvement over what HBC had at that point in  
13 time?  
14 A. It was an improvement that there was  
15 automated reports, certainly some IT help to it in  
16 some regards.  
17 Q. Because prior to 2013, there were no  
18 automated reports; is that right?  
19 A. It was more a manual process, yes.  
20 Q. Not just more a manual process. There  
21 was no automated reporting coming out on a daily  
22 basis; is that right?  
23 A. As far as I could find, no.  
24 Q. You may recall a little earlier today  
25 that you were shown a couple of letters by the

Page 257

1 Drug Enforcement Agency dating back to 2012 and  
2 then prior to 2012.  
3 A. Yes.  
4 Q. Correct me if I'm wrong. It's my  
5 understanding that you cannot recall if you had  
6 actually seen those letters before?  
7 A. Correct.  
8 Q. To your knowledge, did anyone at HBC  
9 ever at any point in time from 2012 to 2014  
10 initiate any communication to DEA in writing  
11 stating that they had read the 2012 letter, but  
12 that they either had any questions about it or  
13 that they would not be able to comply with it for  
14 one reason or another?  
15 A. I don't have any knowledge of that.  
16 Q. Did you speak to anyone at HBC who told  
17 you that they had personally tried to contact DEA  
18 with any questions about the contents of the 2012  
19 letter?  
20 A. I do recall in the conversations from  
21 our supervisor, Walt Durr, that there was  
22 conversations about they were always in contact  
23 with DEA on inspections.  
24 I believe he mentioned that they had audits  
25 that they had come in, some scheduled, some not

Page 258

1 scheduled. Certainly our loss prevention  
2 department has a history of being close with the  
3 different municipalities, both the boards as well  
4 as the DEA and others.  
5 Q. We're going to get a chance to speak  
6 with Mr. Durr I think in a couple of weeks in a  
7 deposition.  
8 But to your knowledge, did he specifically  
9 tell you he had had any discussions with DEA about  
10 the directives given in the DEA's 2012 letter?  
11 A. No.  
12 Q. Similarly, you had no discussions with  
13 anyone else at HBC that recalls having any  
14 discussions with DEA about the specific contents  
15 of the 2012 letter?  
16 A. Not that I had, no.  
17 Q. As I listened to you explain the system  
18 that was in place between 2009 and 2014 at HBC,  
19 it's my understanding that there was communication  
20 between HBC and the Giant Eagle pharmacies on a  
21 regular basis.  
22 A. There's communication between the  
23 warehouse, pharmacy operations, corporate. So it  
24 was not uncommon to have dialogue and  
25 communication amongst those three teams and loss

Page 259

1 prevention, the constituents internally, all the  
2 stakeholders.  
3 Q. Similarly, there was sharing of  
4 information so that if a question existed by HBC  
5 about a shipment, there was an email chain that  
6 somebody could email to a colleague at Giant Eagle  
7 to get information; is that right?  
8 A. There was an ability to, sure.  
9 Q. And we've seen some of those emails  
10 today; right?  
11 A. Yes.  
12 Q. As I understand it from the spreadsheets  
13 we were just looking at, did HBC have access to  
14 Giant Eagle pharmaceutical data?  
15 A. Sure, yes.  
16 Q. If a pharmacist at Giant Eagle had a  
17 question or had a concern they wanted to express  
18 to HBC, they could do that by email?  
19 A. If a pharmacist?  
20 Q. Yes.  
21 A. Sure, they could.  
22 MR. ROTTINGHAUS: I'll show counsel what  
23 has been marked as Exhibit 25.  
24 P-GEN-0085.  
25 (HBC-Tsipakis Exhibit 25 was marked.)

Page 260

1 BY MR. ROTTINGHAUS:  
2 Q. Sir, was HBC a member of the National  
3 Association of Chain Drugstores?  
4 A. Was HBC? Giant Eagle was.  
5 Q. Was HBC?  
6 A. We would contract with that entity at  
7 the parent level, so it would have been Giant  
8 Eagle.  
9 Q. And would HBC have access -- as Giant  
10 Eagle -- as part of Giant Eagle's membership,  
11 would HBC have access to any information shared  
12 among members of the National Association of Chain  
13 Drugstores?  
14 A. Sure.  
15 Q. And have you confirmed that Giant Eagle  
16 indeed was a member of the National Association of  
17 Chain Drugstores between 2009 and 2014?  
18 A. Have I confirmed that?  
19 Q. Yes.  
20 A. No.  
21 Q. Is it your understanding that they were?  
22 A. Speculation, but I would assume they  
23 were, yes.  
24 Q. Well, are you aware of any participation  
25 by Giant Eagle in efforts to communicate with the

Page 261

1 Drug Enforcement Administration about the proposed  
2 change of hydrocodone-containing products from  
3 Schedule III to Schedule II?  
4 MR. BARNES: I'm going to object to the  
5 form. He's already said HBC wasn't a member.  
6 You're asking him about a document for something  
7 it wasn't a member.  
8 BY MR. ROTTINGHAUS:  
9 Q. Are you, sir?  
10 A. I'm sorry. Can you repeat the question,  
11 please?  
12 Q. Let me ask you this: Are you aware of  
13 or do you know whether HBC had any involvement in  
14 any efforts to communicate with the Drug  
15 Enforcement Administration about any concerns HBC  
16 had with the administration's proposed change for  
17 hydrocodone-containing products from Schedule III  
18 to Schedule II?  
19 A. I don't know.  
20 Q. And you'll see that Exhibit 25 is an  
21 April 28, 2014 letter to the Drug Enforcement  
22 Administration.  
23 A. Yes.  
24 Q. And if you look at the top right above  
25 the date of the letter, you'll see that among

<p style="text-align: right;">Page 262</p> <p>1 signatories to this letter was the National 2 Association of Chain Drugstores? 3 A. Yes. 4 Q. And sitting here today, do you have any 5 knowledge whether Giant Eagle or HBC provided any 6 input into this April 28, 2014 letter? 7 A. I do not. 8 Q. Have you ever seen this letter before? 9 A. I have not. 10 Q. Take as much time as you need, but look 11 at the first paragraph of the letter. 12 A. The one that ends with spectrum of 13 practice settings? 14 Q. Yes. Does it appear to you there's 15 being concern expressed about the change from 16 Schedule III to Schedule II for hydrocodone 17 combination products? 18 A. Yes. 19 MR. BARNES: Object to form. 20 BY MR. ROTTINGHAUS: 21 Q. Again, you don't know whether HBC had 22 any participation in communicating the contents of 23 this letter to the Drug Enforcement 24 Administration? 25 A. I do not.</p>	<p style="text-align: right;">Page 264</p> <p>1 video record. 2 BY MR. ROTTINGHAUS: 3 Q. Sir, we just took a short break. I 4 think you had a chance to speak with your 5 attorneys. We also had a chance to speak with 6 your attorneys about a couple of topics that we 7 had asked to raise in your deposition. And 8 specifically, they deal with compensation 9 incentives and policies on compensation 10 incentives. 11 It's my understanding you may not be prepared 12 to go forward with those issues. I just have a 13 couple of questions to make sure. Okay? 14 And specifically what I'm referring to is in 15 the second exhibit or the second deposition notice 16 for 30(b)(6), paragraphs 4 and 5; 3, 4 and 5. 17 Okay? 18 In preparation for your deposition today, 19 have you in any way attempted to prepare yourself 20 to discuss the policies and procedures related to 21 compensation for anyone who worked at HBC or any 22 incentives for people who worked at HBC with 23 respect to the distribution of controlled 24 substances? 25 A. No.</p>
<p style="text-align: right;">Page 263</p> <p>1 Q. Do you know whether internally there was 2 any concern expressed by HBC or anyone at Giant 3 Eagle about what effect changing the hydrocodone 4 combination products from Schedule III to Schedule 5 II might have on Giant Eagle? 6 A. I do not. 7 Q. You were aware that HBC's facility was 8 not equipped and was not licensed to distribute 9 Schedule II controlled substances though? 10 A. Correct. 11 Q. And it never was? 12 A. The HBC warehouse was never licensed or 13 equipped to handle CIIIs, no. 14 Q. Do you know whether Giant Eagle 15 contributed -- strike that. 16 MR. ROTTINGHAUS: It's my understanding 17 a response will be given in writing to paragraphs 18 13, 14 and 15. 19 MR. KOBRIN: Correct. 20 MR. BARNES: Do you mind if we take a 21 minute? 22 THE VIDEOGRAPHER: 4:23. We're off the 23 video record. 24 (Recess from 4:23 p.m. to 4:31 p.m.) 25 THE VIDEOGRAPHER: 4:31. We're on the</p>	<p style="text-align: right;">Page 265</p> <p>1 Q. Probably the same answer, but just to 2 clarify, have you done anything to prepare 3 yourself to talk about in any respect whether any 4 pharmacists at Giant Eagle had policies in place 5 for compensation incentives based upon the number 6 of controlled substances sold? 7 A. No. 8 Q. And so if I were to ask you questions 9 about the compensation incentives today, would 10 your answer be you don't know? 11 A. Correct. 12 MR. BARNES: The reason is because we 13 had an agreement October 15, 2018 letter where we 14 advised plaintiffs that we would be submitting 15 written responses to those topics. Therefore, the 16 witness was not prepared on those topics. 17 BY MR. ROTTINGHAUS: 18 Q. And just to make sure, you're not aware 19 of what policies exist with respect to 20 compensation incentives for individuals at HBC? 21 A. Correct. 22 Q. We saw earlier today a chart that showed 23 what was called ARCOS data, and it showed the 24 number of hydrocodone-containing products that 25 were distributed to Summit County and Cuyahoga</p>

Page 266

1 County in Ohio. Do you remember seeing those?  
2 A. Yes.  
3 Q. And the number is in the millions;  
4 correct?  
5 A. I don't recall.  
6 Q. You don't recall if it was in the  
7 millions?  
8 A. I'd like to see it again. Actually, I  
9 have it here. Is this the one you're referencing?  
10 Q. Yeah. It's Exhibit 15. Let me  
11 reference the internal number on it so we can put  
12 it on the screen. HBC 0015.  
13 MR. BARNES: And was your question  
14 related to Ohio generally?  
15 MR. ROTTINGHAUS: No, to Cuyahoga and  
16 Summit County.  
17 BY MR. ROTTINGHAUS:  
18 Q. Referencing just Cuyahoga County to  
19 start, does it appear to you the data referenced  
20 in this spreadsheet suggests that 10 million total  
21 dosage units were distributed between 2009 and  
22 2014 by HBC to Cuyahoga County?  
23 MR. BARNES: Object to form.  
24 THE WITNESS: I'm looking at this  
25 exhibit that you put in front of me. I don't have

Page 267

1 any way to corroborate if these are actual numbers  
2 from our HBC warehouse or not. I can tell you  
3 what it says, but I have no way to verify what I'm  
4 looking at.  
5 BY MR. ROTTINGHAUS:  
6 Q. What it says -- if it's correct, what it  
7 says is that the total dosage units was 10,103,000  
8 to Cuyahoga County?  
9 A. That's what it says, yes, sir.  
10 Q. And then if we look at the total for  
11 Summit County, the total was 8,892,000?  
12 A. That's what it says, yes.  
13 Q. That was between 2009 and 2014?  
14 A. Yes.  
15 Q. If we wanted to try to corroborate this  
16 data with someone at HBC who would have data  
17 available to them, who would the person be?  
18 A. I believe our procurement department  
19 would be able to help provide that or the IT  
20 department.  
21 Q. Who would you go to in the procurement  
22 department?  
23 A. Robert Micklin.  
24 Q. I believe you also testified to your  
25 knowledge, there has never been a suspicious order

Page 268

1 for any hydrocodone-containing product that was  
2 shipped to Cuyahoga County or Summit County.  
3 A. I testified that there was not a  
4 suspicious order that we -- there was orders of  
5 interest certainly that we've investigated, but as  
6 far as suspicious orders, there was not any  
7 suspicious orders that we identified and hence not  
8 reported to DEA.  
9 Q. Looking back at these total numbers of  
10 10 million to Cuyahoga County, and nearly 9  
11 million to Summit County, does it surprise you  
12 that there was never a suspicious order found by  
13 HBC during the timeframe of 2009 to 2014 for any  
14 hydrocodone-containing product?  
15 MR. BARNES: Object to form.  
16 THE WITNESS: No, it does not. The  
17 reason is because all of our orders were pursuant  
18 to our pharmacies that were pursuant to valid  
19 legitimate prescriptions that we filled.  
20 BY MR. ROTTINGHAUS:  
21 Q. And in fairness to you, I understand  
22 that that's your position. But also in fairness,  
23 you have not undertaken any personal investigation  
24 to make sure all of those were valid orders from  
25 your pharmacies, have you?

Page 269

1 A. Can you ask that again?  
2 Q. You in getting ready for this deposition  
3 haven't undertaken any personal investigation to  
4 make sure all of these orders that totaled 10  
5 million units to Cuyahoga County and 8 million to  
6 Summit County were all valid orders, have you?  
7 MR. BARNES: I object to form. Nor was  
8 he required to do so.  
9 THE WITNESS: I did not.  
10 MR. ROTTINGHAUS: I think that's all I  
11 have.  
12 MR. BARNES: I have some.  
13 EXAMINATION  
14 BY MR. BARNES:  
15 Q. Mr. Tsipakis, you were asked some  
16 questions about the so-called suspicious order  
17 regulation of 1301.74(b). Do you remember that?  
18 A. Yes.  
19 Q. Were you shown during your deposition at  
20 any time the security regulation in 1301.71 of the  
21 Code of Federal Regulations?  
22 A. I was not.  
23 Q. What do you understand the security  
24 regulation to be?  
25 A. The security regulation in its entirety



Page 270

1 is meant to -- for a registrant to have proper  
 2 controls to prevent diversion and theft.  
 3 Q. And do you understand that to be the  
 4 main requirement that distributors are supposed to  
 5 meet?  
 6 MR. GADDY: Object to the form.  
 7 THE WITNESS: Yes.  
 8 BY MR. BARNES:  
 9 Q. Did HBC meet that requirement at all  
 10 times?  
 11 A. Yes.  
 12 MR. GADDY: Objection to form.  
 13 BY MR. BARNES:  
 14 Q. Did Giant Eagle meet that requirement if  
 15 it was required to do so at all times?  
 16 MR. GADDY: Objection to form.  
 17 THE WITNESS: Yes.  
 18 BY MR. BARNES:  
 19 Q. Now, do you understand that the one part  
 20 of the regulation that was shown to you, the  
 21 1301.74, the one that says design and operate a  
 22 system to disclose to the registrant suspicious  
 23 orders of controlled substances, do you understand  
 24 that to be the only factor taken into  
 25 consideration for the security requirement?

Page 271

1 MR. GADDY: Objection to form.  
 2 THE WITNESS: It's not the only factor,  
 3 no.  
 4 BY MR. BARNES:  
 5 Q. What are some of the other factors?  
 6 A. Physical security, record keeping,  
 7 basically multiple controls at all levels in the  
 8 distribution chain.  
 9 Q. So it's not a simple question of meeting  
 10 the security requirement. Just go 1301.74(b) and  
 11 say, well, did you meet this requirement. It's  
 12 more a comprehensive requirement; is that  
 13 accurate?  
 14 MR. GADDY: Objection to form.  
 15 THE WITNESS: It's a much more  
 16 comprehensive process that's needed. That's one  
 17 piece of a total system.  
 18 BY MR. BARNES:  
 19 Q. And is it your understanding under the  
 20 security requirement regulation that you're  
 21 supposed to look at the registrant's overall  
 22 security system, or do you just look at the piece  
 23 called suspicious order monitoring system?  
 24 A. The overall system, the overall system,  
 25 a lot of different factors is listed on the type

Page 272

1 of controls that are distributed, the type of  
 2 chemicals, et cetera. So there's a whole host of  
 3 things that go into that.  
 4 Q. You told us under questioning by  
 5 plaintiffs' counsel that HBC was never a  
 6 controlled substance II facility; is that correct?  
 7 A. That's correct.  
 8 Q. Are those the most dangerous drugs -- in  
 9 terms of the DEA hierarchy, you have controlled Is  
 10 which are what?  
 11 A. Controlled Is, marijuana, peyote,  
 12 et cetera. Those are list I chemicals that  
 13 typically are not in the purview of retail  
 14 pharmacists.  
 15 Q. Would it be fair to say those are  
 16 illegal drugs. Nobody is supposed to use them at  
 17 any time for any purpose?  
 18 MR. GADDY: Objection. Form.  
 19 THE WITNESS: Yes.  
 20 BY MR. BARNES:  
 21 Q. And then below that you get into  
 22 controlled substance Schedule II; is that correct?  
 23 A. Correct.  
 24 Q. Is that where most opioids exist and  
 25 have always existed in that category?

Page 273

1 Prescription opioids I'm talking about.  
 2 MR. GADDY: Objection to form.  
 3 THE WITNESS: Yes.  
 4 BY MR. BARNES:  
 5 Q. The one exception for purposes of our  
 6 case is the HCP products; is that right?  
 7 A. That were later reclassified, yes.  
 8 Q. When HBC distributed that, it only  
 9 distributed it when it was classified as Schedule  
 10 III; is that correct?  
 11 A. Correct.  
 12 Q. So when determining compliance with the  
 13 security requirement, did HBC take into account  
 14 that it was never a controlled substance II  
 15 distributor?  
 16 MR. GADDY: Objection. Form.  
 17 THE WITNESS: Yes.  
 18 BY MR. BARNES:  
 19 Q. Did HBC also consider the quantity of  
 20 the controlled substances it was handling when it  
 21 designed its overall security system?  
 22 A. Yes.  
 23 Q. Did it consider its internal controls  
 24 over the receipt, manufacture, distribution and  
 25 disposition of the controlled substances it was

<p style="text-align: right;">Page 274</p> <p>1 handling?</p> <p>2 A. Yes.</p> <p>3 Q. Did it consider the physical security</p> <p>4 facilities that it had?</p> <p>5 A. Of course, yes.</p> <p>6 Q. While HBC was distributing controlled</p> <p>7 substance IIIs, IVs and Vs, did it get visited</p> <p>8 frequently by the DEA to perform audits and other</p> <p>9 inspections?</p> <p>10 MR. GADDY: Objection to form.</p> <p>11 THE WITNESS: Yes. It was visited by</p> <p>12 the DEA, yes.</p> <p>13 BY MR. BARNES:</p> <p>14 Q. Did the DEA ever say to HBC you're not</p> <p>15 meeting the security requirement under the</p> <p>16 regulations?</p> <p>17 MR. GADDY: Objection. Form.</p> <p>18 THE WITNESS: Not to my knowledge, no.</p> <p>19 BY MR. BARNES:</p> <p>20 Q. Are you aware of any DEA regulation that</p> <p>21 says you're supposed to use a threshold-based</p> <p>22 system to monitor for suspicious orders?</p> <p>23 A. No.</p> <p>24 Q. Are you aware of any DEA regulation that</p> <p>25 requires you to set a threshold at any level?</p>	<p style="text-align: right;">Page 276</p> <p>1 A. Yes.</p> <p>2 Q. Can you just briefly summarize those for</p> <p>3 us?</p> <p>4 MR. GADDY: Objection to form.</p> <p>5 THE WITNESS: Certainly there was a lot</p> <p>6 of pop-up pharmacies on the internet that the DEA</p> <p>7 was cracking down on and certainly there wasn't a</p> <p>8 valid patient/prescriber relationship, and the DEA</p> <p>9 had ramped up regulatory efforts against those to</p> <p>10 curb them or shut them down.</p> <p>11 BY MR. BARNES:</p> <p>12 Q. Did HBC or Giant Eagle at any time ever</p> <p>13 supply an internet pharmacy at any time?</p> <p>14 MR. GADDY: Objection to form.</p> <p>15 THE WITNESS: No.</p> <p>16 BY MR. BARNES:</p> <p>17 Q. Now, with respect to the physical</p> <p>18 structure of the HBC warehouse, did you have a</p> <p>19 locked cage?</p> <p>20 A. Yes.</p> <p>21 Q. Was there controlled access to that</p> <p>22 locked cage?</p> <p>23 A. Yes.</p> <p>24 Q. Was that locked cage inspected and</p> <p>25 approved by the DEA?</p>
<p style="text-align: right;">Page 275</p> <p>1 A. No.</p> <p>2 Q. Now, we're talking about or we covered</p> <p>3 in your direct testimony the fact that Giant Eagle</p> <p>4 had two separate warehouses, is that correct, the</p> <p>5 HBC warehouse and then the GE RX warehouse?</p> <p>6 A. Yes.</p> <p>7 Q. And are they both separately licensed by</p> <p>8 the DEA?</p> <p>9 A. Yes.</p> <p>10 Q. Are they both separate physical</p> <p>11 facilities?</p> <p>12 A. Yes.</p> <p>13 Q. And unlike HBC, which only had a license</p> <p>14 for IIIs, IVs and V, did the GE RX facility also</p> <p>15 do some Schedule IIs?</p> <p>16 A. Yes.</p> <p>17 Q. And do both warehouses only and have</p> <p>18 they only ever supplied Giant Eagle pharmacies?</p> <p>19 A. That's correct.</p> <p>20 Q. Did either warehouse ever supply an</p> <p>21 internet pharmacy?</p> <p>22 A. No.</p> <p>23 Q. Are you aware of the DEA's efforts for</p> <p>24 many years in the late '08, '09, '10 period with</p> <p>25 respect to internet pharmacies?</p>	<p style="text-align: right;">Page 277</p> <p>1 A. Yes.</p> <p>2 Q. Was admittance to the locked cage</p> <p>3 limited to only certain personnel?</p> <p>4 A. Yes.</p> <p>5 Q. Was there limited entry for the number</p> <p>6 of personnel?</p> <p>7 A. Yes.</p> <p>8 Q. What was that number, do you recall?</p> <p>9 A. Three or four individuals only.</p> <p>10 Q. Were they using any type of digital</p> <p>11 inventory system with scanners and wrist bands and</p> <p>12 things of that nature while they were inside the</p> <p>13 controlled substance locked area?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know the name of that system?</p> <p>16 A. I believe Volcom. I think it's Volcom.</p> <p>17 Q. Can you spell that, please?</p> <p>18 A. V-O-L-C-O-M.</p> <p>19 Q. And is that system a form of a perpetual</p> <p>20 inventory system?</p> <p>21 A. Yes.</p> <p>22 Q. Is that a type of internal control at</p> <p>23 the warehouse?</p> <p>24 MR. GADDY: Objection to form.</p> <p>25 THE WITNESS: Sure, yes.</p>

<p style="text-align: right;">Page 278</p> <p>1 BY MR. BARNES:</p> <p>2 Q. The controlled substance orders that</p> <p>3 were picked at the warehouse, the HBC warehouse,</p> <p>4 were they doublechecked before shipping?</p> <p>5 A. Yes.</p> <p>6 Q. Were there physical safeguards to</p> <p>7 prevent theft and diversion at that warehouse?</p> <p>8 A. Yes.</p> <p>9 Q. Even while picking the orders?</p> <p>10 A. Yes.</p> <p>11 Q. Can you just describe a few of them?</p> <p>12 A. So there would be daily audits,</p> <p>13 backcounts. The system would make sure that all</p> <p>14 of the inventory would tie up.</p> <p>15 Q. So if there was any product missing,</p> <p>16 would it be found fairly promptly?</p> <p>17 A. Oh, yes.</p> <p>18 Q. Was there a daily warehouse inventory</p> <p>19 for controlled substances?</p> <p>20 A. Yes.</p> <p>21 Q. Were there security guards and cameras</p> <p>22 throughout the facility?</p> <p>23 A. Yes, multiple.</p> <p>24 Q. Besides the daily inventories, were</p> <p>25 their yearly inventories and biannual DEA</p>	<p style="text-align: right;">Page 280</p> <p>1 A. Yes.</p> <p>2 Q. Is that something that was used for the</p> <p>3 warehouse facilities?</p> <p>4 A. Yes.</p> <p>5 Q. When did that program start being used?</p> <p>6 A. I believe 2015.</p> <p>7 Q. Does that program have the ability to</p> <p>8 stop an order if it exceeds a threshold?</p> <p>9 A. Yes.</p> <p>10 Q. Are you familiar with the Supply Logic</p> <p>11 software program?</p> <p>12 A. Yes.</p> <p>13 Q. Is that another program that Giant Eagle</p> <p>14 used at these warehouses?</p> <p>15 A. Yes.</p> <p>16 Q. And what did that allow Giant Eagle or</p> <p>17 the warehouses to do?</p> <p>18 A. It would allow for us to see the ins and</p> <p>19 outs of inventory and flag anything that had any</p> <p>20 risk or things to look at out of the ordinary.</p> <p>21 Q. Is that a form of an internal control?</p> <p>22 MR. GADDY: Objection to form.</p> <p>23 THE WITNESS: Yes.</p> <p>24 BY MR. BARNES:</p> <p>25 Q. Was that part of the overall security</p>
<p style="text-align: right;">Page 279</p> <p>1 inventories?</p> <p>2 A. Yes.</p> <p>3 Q. Was the warehouse overseen by the Giant</p> <p>4 Eagle audit and accounting department?</p> <p>5 A. Sure, yes.</p> <p>6 Q. You were asked a lot of questions about</p> <p>7 due diligence performed in the 2009 to 2013 time</p> <p>8 period. In fact, Exhibit 12 you were shown a few</p> <p>9 minutes ago and you were asked whether you could</p> <p>10 identify specific investigations for line items on</p> <p>11 these reports.</p> <p>12 Do you recall those questions?</p> <p>13 A. Yes.</p> <p>14 Q. How many transactions like that are we</p> <p>15 talking about in any given -- any given month and</p> <p>16 year?</p> <p>17 A. Thousands, millions, many items.</p> <p>18 Q. And you can't remember every one of</p> <p>19 them?</p> <p>20 A. No.</p> <p>21 Q. And you didn't attempt to memorize every</p> <p>22 one of them in preparation for your deposition?</p> <p>23 A. No.</p> <p>24 Q. Have you ever heard of the term CSOS</p> <p>25 ordering system?</p>	<p style="text-align: right;">Page 281</p> <p>1 system that HBC considered when it was trying to</p> <p>2 comply and complying with the security</p> <p>3 requirement?</p> <p>4 MR. GADDY: Objection to form.</p> <p>5 THE WITNESS: Yes. More further, they</p> <p>6 would look at patterns. They would look at pretty</p> <p>7 holistically the patterns and any deviations.</p> <p>8 BY MR. BARNES:</p> <p>9 Q. You're a pharmacist; is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. What kind of degrees in pharmacy do you</p> <p>12 have?</p> <p>13 A. Bachelor of science in pharmacy.</p> <p>14 Q. And were you a practicing pharmacist in</p> <p>15 a store for a period of time?</p> <p>16 A. Yes.</p> <p>17 Q. Was that for a different chain,</p> <p>18 Albertsons?</p> <p>19 A. Yes.</p> <p>20 Q. Are you familiar with dispensing</p> <p>21 practices and things of that nature?</p> <p>22 A. Yes.</p> <p>23 Q. In your direct testimony upon</p> <p>24 questioning by Mr. Gaddy, you referenced this</p> <p>25 integrated control system, and you referenced</p>

<p style="text-align: right;">Page 282</p> <p>1 three parts to it, at the warehouse, at corporate          2 and at the stores. Do you recall that testimony?          3 A. Yes.          4 Q. At the stores are there internal          5 controls over controlled substances?          6 A. Sure, yes.          7 Q. Are there physical controls over          8 controlled substances?          9 A. Yes.          10 Q. Does that include vaults -- I'm sorry --          11 not vaults, but safes and things of that nature?          12 A. Locked cabinets and safes, yes.          13 Q. And who's allowed access to those locked          14 cabinets and safes?          15 A. Only the pharmacist.          16 Q. Does Giant Eagle have a mechanism to          17 train pharmacists to keep tight control over          18 controlled substances?          19 A. Yes.          20 Q. And is that monitored by loss prevention          21 and internal audit?          22 A. Yes.          23 Q. And are pharmacists and pharmacy techs          24 trained and supervised?          25 MR. GADDY: Objection to form.</p>	<p style="text-align: right;">Page 284</p> <p>1 understand them?          2 A. Yes.          3 Q. And are all of Giant Eagle's pharmacists          4 licensed pharmacists with experience?          5 MR. GADDY: Objection to form.          6 THE WITNESS: Yes.          7 BY MR. BARNES:          8 Q. Are there other manuals containing          9 policies at the store level related to controlled          10 substance other than the DEA pharmacist manual and          11 the controlled substance dispensing guidelines?          12 A. Yes.          13 Q. And do those policies include controls          14 over all controlled substances?          15 A. Yes.          16 Q. Do the stores interface with any          17 statewide systems to make sure that incoming          18 prescriptions are legitimate?          19 A. Yes.          20 Q. In the state of Ohio, is there a name          21 for that system?          22 A. Sure. It's the prescription drug          23 monitoring program, the OARRS program.          24 Q. And is that something that the          25 pharmacists are trained to consult?</p>
<p style="text-align: right;">Page 283</p> <p>1 THE WITNESS: Yes.          2 BY MR. BARNES:          3 Q. Does Giant Eagle at the store level          4 impose policies and procedures on the pharmacists          5 and the pharmacy techs with respect to dispensing          6 prescriptions?          7 A. Yes.          8 Q. Are you familiar with the DEA pharmacist          9 manual?          10 A. Of course, yes.          11 Q. Is that something that's kept at every          12 Giant Eagle pharmacy?          13 A. Yes.          14 Q. And are the pharmacists required to          15 review it and sign off on it?          16 A. Yes.          17 Q. Does Giant Eagle have controlled          18 substance dispensing guidelines?          19 A. Yes.          20 Q. Do those guidelines include red flags,          21 things to watch for in terms of whether a          22 prescription is legitimate or not?          23 A. Yes.          24 Q. And are they required to review those          25 and sign off that they've been trained on it and</p>	<p style="text-align: right;">Page 285</p> <p>1 A. Yes.          2 Q. Will that provide some information about          3 things like doctor shopping and people coming in          4 from out of state, things of that nature?          5 MR. GADDY: Objection to form.          6 THE WITNESS: Yes.          7 BY MR. BARNES:          8 Q. And do Giant Eagle pharmacists use that          9 system?          10 A. Regularly, yes.          11 Q. Is the activity at the store level          12 reported to the DEA in terms of prescriptions          13 filled?          14 A. Yes, yes.          15 Q. Is the DEA -- does the DEA from time to          16 time visit the stores?          17 A. Sure, yes.          18 Q. Do they perform surprise audits and          19 things of that nature?          20 MR. GADDY: Objection to form.          21 THE WITNESS: Audits or if they're          22 coming in for investigations or other things that          23 they're working on, sure, yes.          24 BY MR. BARNES:          25 Q. Do of the boards of pharmacy of the</p>



Page 286

1 states also interface with the stores?  
 2 A. Yes.  
 3 Q. Does the Ohio Board of Pharmacy  
 4 interface with the Giant Eagle stores in these two  
 5 counties at issue?  
 6 MR. GADDY: Objection to form.  
 7 THE WITNESS: Yes.  
 8 BY MR. BARNES:  
 9 Q. Do they perform surprise audits and  
 10 inspections?  
 11 MR. GADDY: Objection to form.  
 12 THE WITNESS: Absolutely, yes.  
 13 BY MR. BARNES:  
 14 Q. To your knowledge, has there ever been a  
 15 problem raised by the DEA or the Ohio Board of  
 16 Pharmacy related to any of the Giant Eagle  
 17 pharmacies in these two jurisdictions?  
 18 MR. GADDY: Objection to form.  
 19 THE WITNESS: Not to my knowledge, no.  
 20 BY MR. BARNES:  
 21 Q. Are there controls over incoming orders  
 22 into the stores, including orders from the other  
 23 distributors? McKesson, I guess, was the main  
 24 distributor of controlled substance IIs for this  
 25 time period; is that correct?

Page 287

1 A. Correct.  
 2 Q. And when those came into the stores,  
 3 were there special procedures over those incoming  
 4 orders?  
 5 A. Yes.  
 6 Q. Were they treated differently than other  
 7 incoming orders?  
 8 A. Absolutely, yes.  
 9 Q. Give us some samples of that.  
 10 A. So those orders would need to be checked  
 11 in by a pharmacist, signed off on the pharmacist.  
 12 Right away when the couriers would drop off, it's  
 13 the expectation that the pharmacist would -- it  
 14 would be segregated. They come in different totes  
 15 and they're handled differently. And any  
 16 discrepancies are immediately noted or called in.  
 17 Q. Is the pharmacist required to  
 18 immediately input -- update the store's controlled  
 19 substance inventory for incoming orders?  
 20 A. Their onions?  
 21 Q. Yes.  
 22 A. Yes.  
 23 Q. And when controlled substance  
 24 prescriptions are filled, is the inventory, the  
 25 store inventory immediately credited for the

Page 288

1 outgoing prescription?  
 2 A. Yes.  
 3 Q. At the end of the day, is there a check  
 4 of the remaining balance of controlled substances  
 5 at the store?  
 6 A. Yes, and especially even more so on  
 7 CIIs. They're backcounted on every fill.  
 8 Q. What does it mean to backcount every  
 9 fill?  
 10 A. The system will prompt for how many  
 11 pills are left in the bottle. So if you had a  
 12 hundred pills to start and you filled 50, you  
 13 would expect to have 50 left in that bottle. So  
 14 the backcount would be to ensure that you had 50  
 15 left in that bottle and inputting that that you do  
 16 have, in fact, 50.  
 17 Q. Are you familiar with the term monthly  
 18 narc audit?  
 19 A. Yes.  
 20 Q. What is that?  
 21 A. The requirement that all of our  
 22 pharmacies do a full inventory of CII narcotics in  
 23 our stores and some other products as well, not  
 24 just can CIIs, but some CIIIs.  
 25 Q. So you have the daily perpetual

Page 289

1 inventory and the monthly narc audits?  
 2 A. Yes.  
 3 Q. You also have the annual audits or  
 4 inventories of controlled substances at every  
 5 store?  
 6 A. The DEA requires an biannual inventory.  
 7 We do an annual inventory on top, yes. We do a  
 8 yearly inventory instead of biannual.  
 9 Q. Can you tell us what a PDL is?  
 10 A. PDL is a pharmacy district leader.  
 11 Q. And what do they do?  
 12 A. They supervise the stores. They're  
 13 basically a district manager that oversees the  
 14 stores for all aspects of ensuring Pharmacy  
 15 Practice Act, DEA, company policy. They're the  
 16 oversight for the stores, direct oversight for the  
 17 stores.  
 18 Q. Do they regularly visit the stores?  
 19 A. Yes.  
 20 Q. Do they conduct audits or inquiries  
 21 concerning their procedures and things of that  
 22 nature?  
 23 A. They do audits. We also have an  
 24 internal audit that quarterly visits the stores  
 25 for a myriad of things, but yes.

Page 290

1 Q. Is there any supervision of training of  
2 pharmacists?  
3 A. Yes.  
4 Q. Is that something a PDL does?  
5 A. A PDL would definitely make sure any  
6 training that needs to be done or computer-based  
7 training is completed, and if there's any  
8 remediation that's needed, that's their job to  
9 make sure.  
10 Q. Do the stores work with local law  
11 enforcement, police, board of pharmacy inspectors,  
12 DEA agents?  
13 A. Oh, yes, all the time.  
14 MR. GADDY: Objection to form.  
15 BY MR. BARNES:  
16 Q. Is that cooperative working  
17 relationship?  
18 MR. GADDY: Objection to form.  
19 THE WITNESS: Very much so, yes.  
20 BY MR. BARNES:  
21 Q. In working with local law enforcement  
22 and DEA, have you been able to uncover people  
23 attempting to pass bad scripts, things of that  
24 nature?  
25 A. Yes.

Page 291

1 Q. Is there a pharmacy investigator?  
2 A. Yes.  
3 Q. Who is that?  
4 A. Rick Shaheen.  
5 Q. If how much experience does he have?  
6 A. He has a lot of experience. He has a  
7 background in law enforcement, attorneys general's  
8 office, a very -- has a lot of contacts with DEA,  
9 boards of pharmacy. So he's been -- he's been in  
10 the business a long time.  
11 Q. Does he spend a lot of time in the  
12 stores?  
13 MR. GADDY: Objection to form.  
14 THE WITNESS: Yes.  
15 BY MR. BARNES:  
16 Q. Does he also work individually with  
17 local law enforcement and DEA?  
18 A. Yes.  
19 Q. Are you familiar with the term or the  
20 acronym BOLO, B-O-L-O?  
21 A. Yes.  
22 Q. What is it?  
23 A. Be on the lookout for. So he will send  
24 out bulletins to the pharmacists when either law  
25 enforcement will tell him that there's bad scripts

Page 292

1 on the street or a prescription pad, for example,  
2 if it's stolen or something, either if we have  
3 information -- so Rick is involved with -- Rick  
4 and Andrew, who work for Rick, are involved with  
5 all of those activities and alert our stores as  
6 soon as they know something and we disseminate  
7 very quickly to all our stores.  
8 Q. And is that the type of information  
9 that's also in the OARRS database, or is that  
10 different?  
11 MR. GADDY: Objection to form.  
12 THE WITNESS: Different.  
13 BY MR. BARNES:  
14 Q. Are there daily counts of certain drugs?  
15 A. Yes.  
16 Q. Does that include HCP, hydrocodone, or  
17 HCP products?  
18 A. Yes.  
19 Q. Is there an electronic prescription  
20 system with perpetual logs at the stores?  
21 A. Yes.  
22 Q. Is that a form of internal control?  
23 A. Yes.  
24 Q. Is there diversion training for pharmacy  
25 employees on a yearly basis?

Page 293

1 MR. GADDY: Objection to form.  
2 THE WITNESS: Yes.  
3 BY MR. BARNES:  
4 Q. Now, you were asked a lot of questions  
5 about so-called suspicious orders. And I didn't  
6 hear a lot of questioning about diversion.  
7 Do you understand the term diversion?  
8 MR. GADDY: Objection to the question,  
9 form of the question.  
10 THE WITNESS: Yes.  
11 BY MR. BARNES:  
12 Q. What does the term diversion mean to  
13 you?  
14 A. Diversion, theft, loss, things being  
15 routed to folks that shouldn't have access to the  
16 drugs or prescriptions.  
17 Q. If an order is suspicious, does that  
18 mean it was diverted?  
19 MR. GADDY: Objection to form.  
20 THE WITNESS: No, not necessarily, no.  
21 BY MR. BARNES:  
22 Q. In fact, what has HBC's and Giant  
23 Eagle's experience been with respect to so-called  
24 suspicious orders or flagged orders? Have they  
25 resulted in uncovering diversion?

<p style="text-align: right;">Page 294</p> <p>1 MR. GADDY: Objection to form.</p> <p>2 THE WITNESS: No.</p> <p>3 BY MR. BARNES:</p> <p>4 Q. What happens to -- you were asked</p> <p>5 questions on Exhibit 15 of these 10 million dosage</p> <p>6 units in Cuyahoga County. What happened to those</p> <p>7 10 million units? Where did they go?</p> <p>8 MR. GADDY: Objection to form.</p> <p>9 THE WITNESS: Assuming those were the 10</p> <p>10 million units that we dispensed out of HBC, they</p> <p>11 were dispensed to patients that were pursuant --</p> <p>12 on a valid prescription.</p> <p>13 BY MR. BARNES:</p> <p>14 Q. And how about the dosage units that went</p> <p>15 out to Summit County presuming that these numbers</p> <p>16 are correct?</p> <p>17 MR. GADDY: Same objection.</p> <p>18 THE WITNESS: The same. Every single</p> <p>19 one of them would have been dispensed pursuant to</p> <p>20 a prescription by a licensed practitioner for</p> <p>21 those patients.</p> <p>22 BY MR. BARNES:</p> <p>23 Q. In your direct questioning today, were</p> <p>24 you shown at any time any evidence, any document,</p> <p>25 any piece of paper by plaintiffs' counsel</p>	<p style="text-align: right;">Page 296</p> <p>1 designed to maintain the integrity of the closed</p> <p>2 system of distribution from incoming at the</p> <p>3 warehouse to outgoing at the stores?</p> <p>4 A. Yes.</p> <p>5 MR. GADDY: Objection to form.</p> <p>6 BY MR. BARNES:</p> <p>7 Q. The system that was designed by Giant</p> <p>8 Eagle, did you expect it to ever produce a</p> <p>9 suspicious order?</p> <p>10 MR. GADDY: Objection to form.</p> <p>11 THE WITNESS: No.</p> <p>12 BY MR. BARNES:</p> <p>13 Q. Before you had the threshold-based</p> <p>14 system, you've already testified, I think, there</p> <p>15 was one suspicious order?</p> <p>16 A. Yes.</p> <p>17 Q. And after you had the threshold-based</p> <p>18 system, you had one suspicious order?</p> <p>19 A. One more, yes.</p> <p>20 Q. What does that tell you?</p> <p>21 MR. GADDY: Objection to form.</p> <p>22 THE WITNESS: That we had adequate</p> <p>23 controls from the beginning. Adding more layers</p> <p>24 of controls didn't materially change the outcome</p> <p>25 of the system we had in place.</p>
<p style="text-align: right;">Page 295</p> <p>1 suggesting that any single one of these</p> <p>2 prescriptions was anything other than a legitimate</p> <p>3 prescription issued by a doctor who had a</p> <p>4 legitimate license to issue it?</p> <p>5 MR. GADDY: Objection to form.</p> <p>6 THE WITNESS: No.</p> <p>7 BY MR. BARNES:</p> <p>8 Q. Were you shown any evidence at any time</p> <p>9 that any of these prescriptions caused anybody any</p> <p>10 harm at any time in any jurisdiction?</p> <p>11 MR. GADDY: Objection to form.</p> <p>12 THE WITNESS: No.</p> <p>13 BY MR. BARNES:</p> <p>14 Q. Did the DEA at any time inform HBC or</p> <p>15 Giant Eagle that it was required to keep records</p> <p>16 of every call, every conversation that was made</p> <p>17 with respect to following up on orders of</p> <p>18 interest?</p> <p>19 MR. GADDY: Objection to form.</p> <p>20 THE WITNESS: No.</p> <p>21 BY MR. BARNES:</p> <p>22 Q. Did HBC and Giant Eagle keep those</p> <p>23 records and emails in other types of files?</p> <p>24 A. Yes.</p> <p>25 Q. Is Giant Eagle's integrated system</p>	<p style="text-align: right;">Page 297</p> <p>1 BY MR. BARNES:</p> <p>2 Q. Do you understand that the plaintiffs in</p> <p>3 this case are the City of Cleveland, City of Akron</p> <p>4 and the counties of Summit and Cuyahoga?</p> <p>5 A. Yes.</p> <p>6 Q. To your knowledge, did any of those</p> <p>7 plaintiffs ever approach Giant Eagle or HBC and</p> <p>8 say, we think we have a problem, we'd like your</p> <p>9 assistance, or this doctor is bad or there's a</p> <p>10 pill mill down the street, don't fill these</p> <p>11 prescriptions? Did they ever do anything like</p> <p>12 that?</p> <p>13 MR. GADDY: Objection to form.</p> <p>14 THE WITNESS: No; not to my knowledge,</p> <p>15 no.</p> <p>16 BY MR. BARNES:</p> <p>17 Q. The employees that work in the Giant</p> <p>18 Eagle pharmacies in these jurisdictions, do they</p> <p>19 live in those communities?</p> <p>20 A. Yes.</p> <p>21 MR. GADDY: Objection to form.</p> <p>22 THE WITNESS: Absolutely, yes.</p> <p>23 MR. BARNES: I've got no further</p> <p>24 questions.</p> <p>25 RE-EXAMINATION</p>

Page 298

1 BY MR. GADDY:  
 2 Q. Mr. Tsipakis, you were asked a lot of  
 3 questions about some of the security requirements.  
 4 I want to kind of zero in with a little more  
 5 specificity to some of those.  
 6 You were asked by Mr. Barnes whether or not  
 7 there was any requirement that HBC adopt a  
 8 threshold program. Do you recall that?  
 9 A. Yes.  
 10 Q. And you said there's not; correct?  
 11 A. A specific threshold system; correct.  
 12 Q. But you agree that there absolutely is a  
 13 requirement that HBC design and operate a system  
 14 meant to detect suspicious orders of controlled  
 15 substances; correct?  
 16 A. Yes.  
 17 Q. The DEA is not charged with designing  
 18 and operating a system to do that, are they?  
 19 A. They are not.  
 20 Q. DEA is not obligated to tell you how to  
 21 run your own business and design and operate your  
 22 own system, are they?  
 23 A. The DEA has actually given no guidance.  
 24 It just says that you need to have of a system to  
 25 disclose suspicious orders, keep control of your

Page 299

1 controlled substances, make sure you know where  
 2 they're going, all those general requirements that  
 3 are inside the controlled substance security  
 4 requirements, yes.  
 5 Q. It's the law that says that it's HBC's  
 6 responsibility, correct, not the DEA's? It's the  
 7 law that says that; right?  
 8 A. I'm sorry. I'm not following. It's DEA  
 9 reg. that says that?  
 10 Q. Sure. Well, it's a federal regulation  
 11 that says HBC has the responsibility to design and  
 12 operate a system; correct?  
 13 A. Yes.  
 14 Q. So the federal regulation requires HBC  
 15 to do that, not anybody else; correct?  
 16 A. It requires the registrant, which is  
 17 HBC, ultimately Giant Eagle, yes.  
 18 Q. And that includes individuals or  
 19 entities such as HBC which were distributing  
 20 Schedule III controlled substances like  
 21 hydrocodone combination products; correct?  
 22 A. Yes.  
 23 Q. We looked at several of the documents  
 24 earlier. Do you recall them talking about how  
 25 hydrocodone combination products were the most

Page 300

1 commonly prescribed and most widely abused  
 2 opioids? Do you recall those documents?  
 3 A. Yes.  
 4 Q. Were you attempting to downplay that in  
 5 your answers to Mr. Barnes when he was talking  
 6 about the differences between IIIs and IIs and Is?  
 7 A. No, absolutely not.  
 8 Q. You would agree that there's been more  
 9 individuals who have died from abusing Schedule  
 10 III hydrocodone combination products than there  
 11 are that have died from abusing Schedule I  
 12 marijuana; do you agree with that?  
 13 MR. BARNES: Object to form.  
 14 THE WITNESS: I don't have the  
 15 statistics to tell you which one was more or less.  
 16 The prescription products in question are life  
 17 sustaining. If they're abused and used  
 18 inappropriately, they can have ill effects.  
 19 BY MR. GADDY:  
 20 Q. You're not quarreling with the documents  
 21 that you saw today that indicated hydrocodone  
 22 combination products are the most frequently  
 23 prescribed and most widely abused of the opioids,  
 24 are you?  
 25 MR. BARNES: Object to form.

Page 301

1 THE WITNESS: From what you said, those  
 2 were the quotes they're listing there, and I read  
 3 them with you, yes.  
 4 BY MR. GADDY:  
 5 Q. You don't take any issue with that; you  
 6 don't disagree with that?  
 7 A. I don't disagree that there's a lot of  
 8 hydrocodone products that have been abused, sure.  
 9 Q. And you don't disagree that those drugs  
 10 that HBC distributed are subject to abuse and  
 11 addiction?  
 12 A. Sure.  
 13 Q. In the answers that you were giving to  
 14 Mr. Barnes as it related to the security  
 15 requirements, were you intending to imply that it  
 16 was not important that HBC design and operate a  
 17 system to detect suspicious orders?  
 18 A. Absolutely not. The whole point of it  
 19 was that when HBC designed their system, all of  
 20 the different pieces of the security provision  
 21 needed to be taken into consideration, including  
 22 the class and type of medications or prescriptions  
 23 that we would be distributing.  
 24 Q. And you agree that all aspects of the  
 25 security requirement are important; correct?



<p style="text-align: right;">Page 302</p> <p>1 A. Sure, yes.</p> <p>2 Q. If you don't lock the door, that could</p> <p>3 be just as bad as not having a program that</p> <p>4 detects suspicious orders?</p> <p>5 A. A holistic system, keeping the security</p> <p>6 and the sanctity and the security of controlled</p> <p>7 substances in a closed system is of utmost</p> <p>8 importance.</p> <p>9 Q. And that includes the aspect of that</p> <p>10 security requirement that requires HBC to design</p> <p>11 and operate a system to detect suspicious orders;</p> <p>12 correct?</p> <p>13 A. Yes.</p> <p>14 Q. And you agree that that aspect of the</p> <p>15 security requirement is critical to making sure</p> <p>16 the closed system of distribution works the way</p> <p>17 it's supposed to?</p> <p>18 MR. BARNES: Object to form.</p> <p>19 THE WITNESS: As I mentioned numerous</p> <p>20 times today, that's one component of the total</p> <p>21 picture of a holistic system approach outcome.</p> <p>22 There's many requirements that need to be</p> <p>23 considered and holistically implemented and</p> <p>24 enforced.</p> <p>25</p>	<p style="text-align: right;">Page 304</p> <p>1 Q. There was a second program that you</p> <p>2 named. I missed the name of the program that</p> <p>3 Mr. Barnes asked you about.</p> <p>4 Do you recall what that was? You said --</p> <p>5 A. Was it Supply Logics? Is that the one?</p> <p>6 Q. That may be it. What is that system,</p> <p>7 when did that come about, and who was it that</p> <p>8 utilized by?</p> <p>9 A. So it's a system that has different</p> <p>10 modules within it. It tracks basically the ins</p> <p>11 and outs of controlled substances within the</p> <p>12 pharmacies and looks for patterns of anything that</p> <p>13 is out of the norm by store, individually by</p> <p>14 store.</p> <p>15 Q. So that's a product that is utilized by</p> <p>16 the pharmacies; correct?</p> <p>17 A. It's a product that's utilized by Giant</p> <p>18 Eagle corporate in that integrated system that we</p> <p>19 talked about.</p> <p>20 Q. And when did that product come online?</p> <p>21 A. I believe it was 2015.</p> <p>22 Q. Did HBC distribute any hydrocodone</p> <p>23 combination products after that program came</p> <p>24 online?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 303</p> <p>1 BY MR. GADDY:</p> <p>2 Q. Mr. Barnes asked you about a lot of</p> <p>3 different computer programs or reports that are</p> <p>4 run, but he didn't ask you about the dates of any</p> <p>5 of those. So I want to try to clean a little bit</p> <p>6 of that up. He asked you about CSOS, the C-S-O-S.</p> <p>7 Do you recall that?</p> <p>8 A. Yes.</p> <p>9 Q. HBC as a distributor of Schedule III</p> <p>10 controlled substances, did they ever utilize CSOS?</p> <p>11 A. Yes.</p> <p>12 Q. Beginning when?</p> <p>13 A. I believe it was 2015.</p> <p>14 Q. Well, HBC didn't distribute Schedule III</p> <p>15 narcotics in 2015, did they?</p> <p>16 A. HBC in 2015, they did dispense Class</p> <p>17 IIIs. Class IIs they did not.</p> <p>18 Q. The hydrocodone combination products</p> <p>19 were reclassified in 2014; correct?</p> <p>20 A. But you asked me if they dispensed Class</p> <p>21 IIIs, which they did.</p> <p>22 Q. Sorry. Bad question. Did HBC ever</p> <p>23 distribute hydrocodone combination product while</p> <p>24 using CSOS?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 305</p> <p>1 Q. You mentioned the pharmacy investigator,</p> <p>2 Rick Shaheen; correct?</p> <p>3 A. Yes.</p> <p>4 Q. Does Mr. Shaheen have any training or</p> <p>5 education in detecting or identifying suspicious</p> <p>6 orders of controlled substances that would come</p> <p>7 from pharmacies?</p> <p>8 A. Having met Mr. Shaheen and spending time</p> <p>9 with Mr. Shaheen and looking at his very diverse</p> <p>10 background, I feel he's absolutely qualified to do</p> <p>11 investigations to support our operation, yes.</p> <p>12 Q. I'm not questioning his qualifications</p> <p>13 as a law enforcement officer or as a pharmacy</p> <p>14 investigator. What I'm asking is a little bit</p> <p>15 different.</p> <p>16 I'm asking whether or not you're aware of him</p> <p>17 having any training or experience or education as</p> <p>18 it relates to HBC's duty under the Controlled</p> <p>19 Substance Act to design and operate a system to</p> <p>20 detect suspicious orders.</p> <p>21 A. That I do not know, no.</p> <p>22 Q. We agree that HBC was under no</p> <p>23 obligation to utilize a threshold system in 2013;</p> <p>24 correct?</p> <p>25 A. Correct.</p>

<p style="text-align: right;">Page 306</p> <p>1 Q. But HBC chose to do so; correct?</p> <p>2 A. As one level of control, yes.</p> <p>3 Q. And this was touched on a little bit</p> <p>4 earlier, but I think with me you indicated that</p> <p>5 the original methodology was flawed and was a</p> <p>6 system that could produce false positives;</p> <p>7 correct?</p> <p>8 A. Certainly. When you do an average, yes,</p> <p>9 it's possible, yes.</p> <p>10 Q. Then you also were asked after lunch</p> <p>11 whether or not that same system could produce</p> <p>12 false negatives, and you agreed that was also a</p> <p>13 possibility; right?</p> <p>14 A. Possible, yes.</p> <p>15 Q. I might get these numbers wrong, but I</p> <p>16 believe the example you gave to me when I was</p> <p>17 asking questions this morning was that you had</p> <p>18 some pharmacies that wrote 6000 scripts per month,</p> <p>19 and you had some pharmacies that wrote 300 scripts</p> <p>20 per month.</p> <p>21 A. If you mean dispense, yes, but that's</p> <p>22 not just controlled substances. That's total</p> <p>23 prescriptions. But yes.</p> <p>24 Q. Sure. So just like I think the example</p> <p>25 you pointed out or maybe one of your higher volume</p>	<p style="text-align: right;">Page 308</p> <p>1 threshold, was moving to a threshold system. The</p> <p>2 company felt that that might be something we want</p> <p>3 to incorporate into our controls, and that's what</p> <p>4 the company did.</p> <p>5 BY MR. GADDY:</p> <p>6 Q. The Thrifty White visit that you</p> <p>7 referenced was in 2015; correct?</p> <p>8 A. I don't recall the date.</p> <p>9 Q. If it was in 2015, that would be after</p> <p>10 HBC stopped distributing hydrocodone combination</p> <p>11 products?</p> <p>12 A. Sure.</p> <p>13 Q. And the threshold system came out four</p> <p>14 years after you started distributing hydrocodone</p> <p>15 combination products; correct?</p> <p>16 A. Sure.</p> <p>17 Q. And the other aspects of that system</p> <p>18 that you state you had is what you referred to as</p> <p>19 the integrated approach that used the pickers, the</p> <p>20 superintendent and the individuals with the</p> <p>21 procurement division; correct?</p> <p>22 MR. BARNES: Object to form. Misstates</p> <p>23 the testimony.</p> <p>24 THE WITNESS: As I testified today, if</p> <p>25 you have the right diligence on the front end,</p>
<p style="text-align: right;">Page 307</p> <p>1 stores would consistently pop up on that threshold</p> <p>2 report, it's just as likely that you could have a</p> <p>3 lower volume store doing two, three, four times</p> <p>4 what maybe it should be doing for its traffic, but</p> <p>5 that would not pop up on the threshold report;</p> <p>6 correct?</p> <p>7 A. It's possible.</p> <p>8 Q. And that's a symptom of the flawed</p> <p>9 methodology behind using a threshold program built</p> <p>10 on a chain-wide average; correct?</p> <p>11 MR. BARNES: Object to form.</p> <p>12 THE WITNESS: Well, we didn't just rely</p> <p>13 on one system. So we didn't base our whole</p> <p>14 control and our compliance with the security</p> <p>15 regulation on just thresholds. There was a reason</p> <p>16 why -- I think Giant Eagle has demonstrated a</p> <p>17 diligence and an absolute resilience to continue</p> <p>18 to improve.</p> <p>19 I think you mentioned Thrifty White before.</p> <p>20 I think it's been documented that we did</p> <p>21 everything possible to try to continue to better</p> <p>22 ourselves, including talking to other companies on</p> <p>23 what they were doing in addition to what the</p> <p>24 industry was doing.</p> <p>25 So the industry in 2013, whenever we did that</p>	<p style="text-align: right;">Page 309</p> <p>1 making sure that you're filling appropriate</p> <p>2 prescriptions from appropriate practitioners and</p> <p>3 you're fulfilling orders pursuant to those</p> <p>4 legitimate prescriptions, that's a big piece of</p> <p>5 the system, yes.</p> <p>6 BY MR. GADDY:</p> <p>7 Q. That's the pharmacy piece. That's not</p> <p>8 the HBC piece; correct?</p> <p>9 A. As I mentioned multiple times today, it</p> <p>10 was an integrated system amongst -- Giant Eagle</p> <p>11 owns all pieces of that. So for us, our approach</p> <p>12 was looking at it holistically as one total</p> <p>13 obligation.</p> <p>14 Q. And looking at it holistically as one</p> <p>15 total obligation, over -- from '09 to '14, over 18</p> <p>16 million hydrocodone pills just in the two counties</p> <p>17 in the state of Ohio and you reported two</p> <p>18 suspicious orders and neither of those were for</p> <p>19 hydrocodone combination product; correct?</p> <p>20 A. Correct.</p> <p>21 MR. GADDY: That's all I have.</p> <p>22 MR. BARNES: I have a follow-up.</p> <p>23 RE-EXAMINATION</p> <p>24 BY MR. BARNES:</p> <p>25 Q. Did HBC and Giant Eagle believe it had</p>

Page 310

1 any duty to not ship to its own stores before its  
2 investigation was complete of anything -- of any  
3 order of interest?  
4 A. No.  
5 MR. BARNES: I have nothing further.  
6 Thank you.  
7 THE VIDEOGRAPHER: 5:20 p.m. We're off  
8 the video record. This concludes the video  
9 deposition.  
10 (Whereupon, at 5:20 p.m., taking of the  
11 instant deposition ceased.)  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Page 311

1 COMMONWEALTH OF PENNSYLVANIA )  
2 COUNTY OF ALLEGHENY ) SS:  
3 C E R T I F I C A T E  
4 I, Ann Medis, Registered Professional  
5 Reporter, Certified Livenote Reporter and Notary  
6 Public within and for the Commonwealth of  
7 Pennsylvania, do hereby certify:  
8 That JAMES TSIPAKIS, the witness whose  
9 deposition is hereinbefore set forth, was duly  
10 sworn by me and that such deposition is a true  
11 record of the testimony given by such witness.  
12 I further certify the inspection,  
13 reading and signing of said deposition were not  
14 waived by counsel for the respective parties and  
15 by the witness.  
16 I further certify that I am not related  
17 to any of the parties to this action by blood or  
18 marriage and that I am in no way interested in the  
19 outcome of this matter.  
20 IN WITNESS WHEREOF, I have hereunto set  
21 my hand this 18th day of December, 2018.  
22  
23 \_\_\_\_\_  
24 Notary Public  
25

Page 312

1 -----  
2 E R R A T A  
3 -----  
4 PAGE LINE CHANGE  
5 \_\_\_\_\_  
6 REASON: \_\_\_\_\_  
7 \_\_\_\_\_  
8 REASON: \_\_\_\_\_  
9 \_\_\_\_\_  
10 REASON: \_\_\_\_\_  
11 \_\_\_\_\_  
12 REASON: \_\_\_\_\_  
13 \_\_\_\_\_  
14 REASON: \_\_\_\_\_  
15 \_\_\_\_\_  
16 REASON: \_\_\_\_\_  
17 \_\_\_\_\_  
18 REASON: \_\_\_\_\_  
19 \_\_\_\_\_  
20 REASON: \_\_\_\_\_  
21 \_\_\_\_\_  
22 REASON: \_\_\_\_\_  
23 \_\_\_\_\_  
24 REASON: \_\_\_\_\_  
25

Page 313

1 ACKNOWLEDGMENT OF DEPONENT  
2  
3 I, \_\_\_\_\_, do hereby  
4 certify that I have read the foregoing pages, and that  
5 the same is a correct transcription of the answers  
6 given by me to the questions therein propounded, except  
7 for the corrections or changes in form or substance, if  
8 any, noted in the attached Errata Sheet.  
9  
10  
11 \_\_\_\_\_  
12 [WITNESS NAME] DATE  
13  
14  
15 Subscribed and sworn to  
16 before me on this \_\_\_\_ day  
17 of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_  
18 \_\_\_\_\_,  
19 proved to me on the basis of satisfactory  
20 evidence to be the person(s) who appeared before me.  
21  
22 Signature \_\_\_\_\_  
23  
24  
25